LAW OF THE SEA

ROB YOUNG, COUNSEL

COMNAVMETOCCOM-COUNSEL

HISTORICAL OVERVIEW

- CUSTOMARY INTERNATIONAL LAW
- TRUMAN PROCLAMATION
- CREEPING JURISDICTION
- UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

TRUMAN PROCLAMATION

- CONTINENTAL SHELF - NATURAL RESOURCES
- FISHERIES
- FREEDOM OF NAVIGATION AND OVERFLIGHT

CREEPING JURISDICTION

- SANTIAGO DECLARATION
- 200 NM MARITIME ZONES
- CLAIMED SOVEREIGNTY OVER RESOURCES & WATER COLUMN
- THREAT TO FREEDOM OF NAVIGATION IN TRADITIONAL HIGH SEAS

CODIFICATION

- UNCLOS I (1958)
  - BREADTH OF TERRITORIAL SEA
  - EXTENT OF COASTAL STATE JURISDICTION
  - FISHING
- UNCLOS II (1960)
  - NO AGREEMENT REACHED

UNCLOS III

- UNRESOLVED LOS ISSUES
- 150 NATIONS PARTICIPATED
- 1982 LOS CONVENTION
- CONSENSUS ON BROAD RANGE OF ISSUES

OPPOSITION TO 1982 UN LOS CONVENTION

- ISRAEL - PLO SHARING DEEP SEABED RESOURCES
- TURKEY - BOUNDARY PROBLEM
- UNITED STATES - PART IX
- VENEZUELA - BOUNDARY DISPUTE WITH COLUMBIA

1982 UN LAW OF THE SEA CONVENTION

- COMPREHENSIVE TREATY
- CODIFIES CAREFUL BALANCE
- COASTAL STATE INTERESTS
- FREEDOM OF OCEANS

THE "PACKAGE DEAL" AKA THE *QUID PRO QUO*

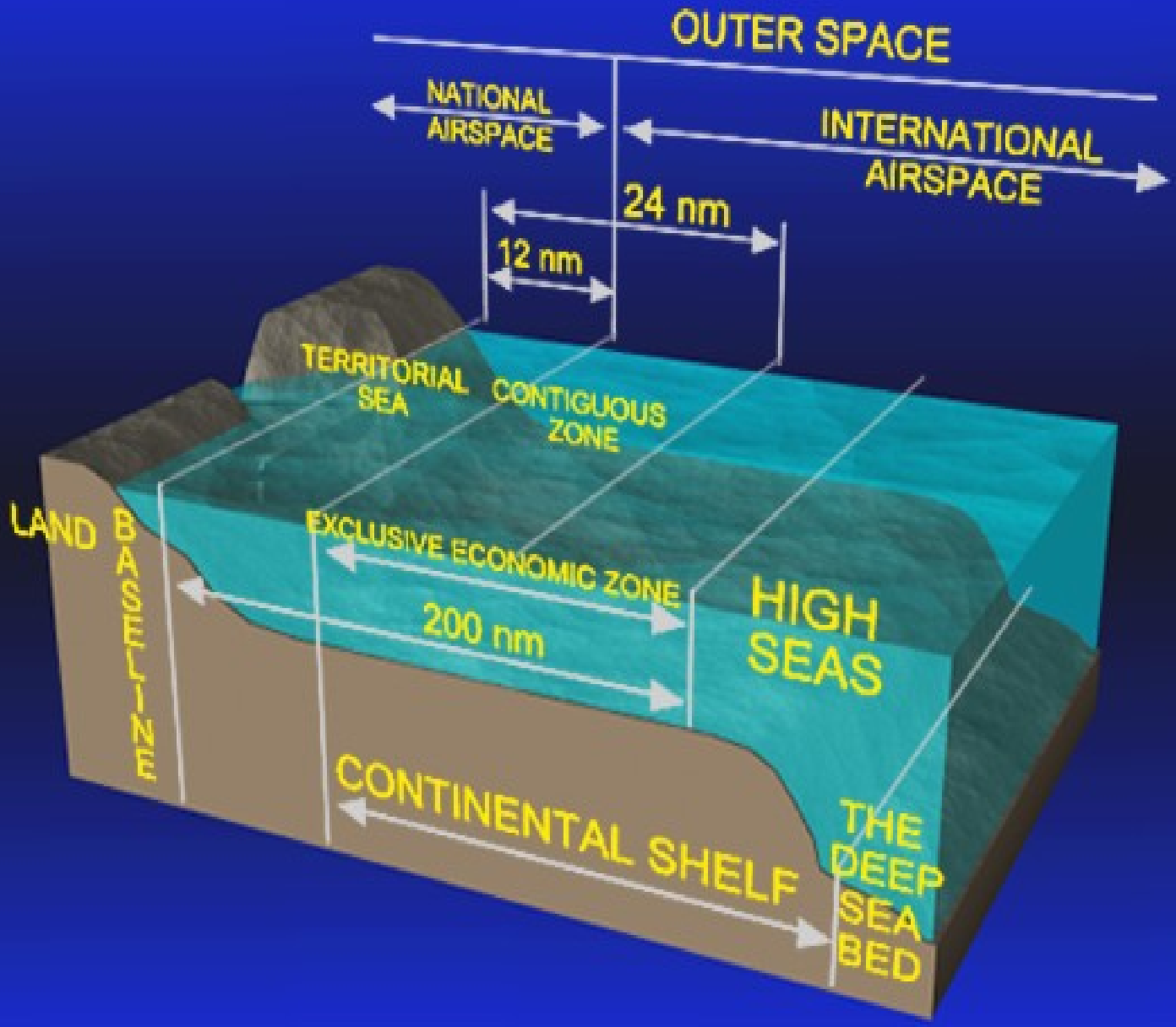
- MARITIME POWERS WOULD CONCEDE:
  - SOVEREIGNTY OVER ARCHIPELAGIC WATERS
  - 12 MILE TERRITORIAL SEAS
- COASTAL AND ARCHIPELAGIC STATES WOULD CONCEDE:
  - TRANSIT RIGHTS

LOS CONVENTION BASICS

- DEFINES MARITIME ZONES
- CODIFIES NAVIGATIONAL RIGHTS AND FREEDOMS
- RECOGNIZES SOVEREIGN IMMUNITY OF WARSHIPS AND GOVERNMENT VESSELS IN NONCOMMERCIAL SERVICE

MARITIME ZONES

- INTERNAL WATERS
- TERRITORIAL SEA (TS)
- CONTIGUOUS ZONE (CZ)
- EXCLUSIVE ECONOMIC ZONE (EEZ)
- CONTINENTAL SHELF (CS)


OUTER SPACE
NATIONAL AIRSPACE
INTERNATIONAL AIRSPACE
24 nm
12 nm
TERRITORIAL SEA
CONTIGUOUS ZONE
LAND
BASELINE
EXCLUSIVE ECONOMIC ZONE
200 nm
HIGH SEAS
CONTINENTAL SHELF
THE DEEP SEA BED

CURRENT STATUS OF LOS CONVENTION

- ENTERED INTO FORCE, 16 NOV 94
- 130 PARTIES (1 APR 1999)
- MOVEMENT TOWARDS BECOMING PARTIES
- 6 OCT 94 SENATE ADVISE & CONSENT REQUESTED

WIDESPREAD ADHERENCE

- 128 STATES CLAIM 12 NM (OR LESS) TERRITORIAL SEA • 17 EXCESSIVE TERRITORIAL SEA CLAIMS • 16 STATES ROLLED BACK EXCESSIVE CLAIMS
- 55 STATES CLAIM 24 NM (OR LESS) CONTIGUOUS ZONE • SYRIA 41 NM ZONE
- 95 STATES CLAIM 200 NM EEZ
- 19 STATES CLAIM 200 NM (OR LESS) FISHERY ZONE

SURVEY OF THE LAW OF THE SEA

COMNAVMETOCCOM-COUNSEL

AREAS OF SPECIAL INTEREST TO HYDROGRAPHERS

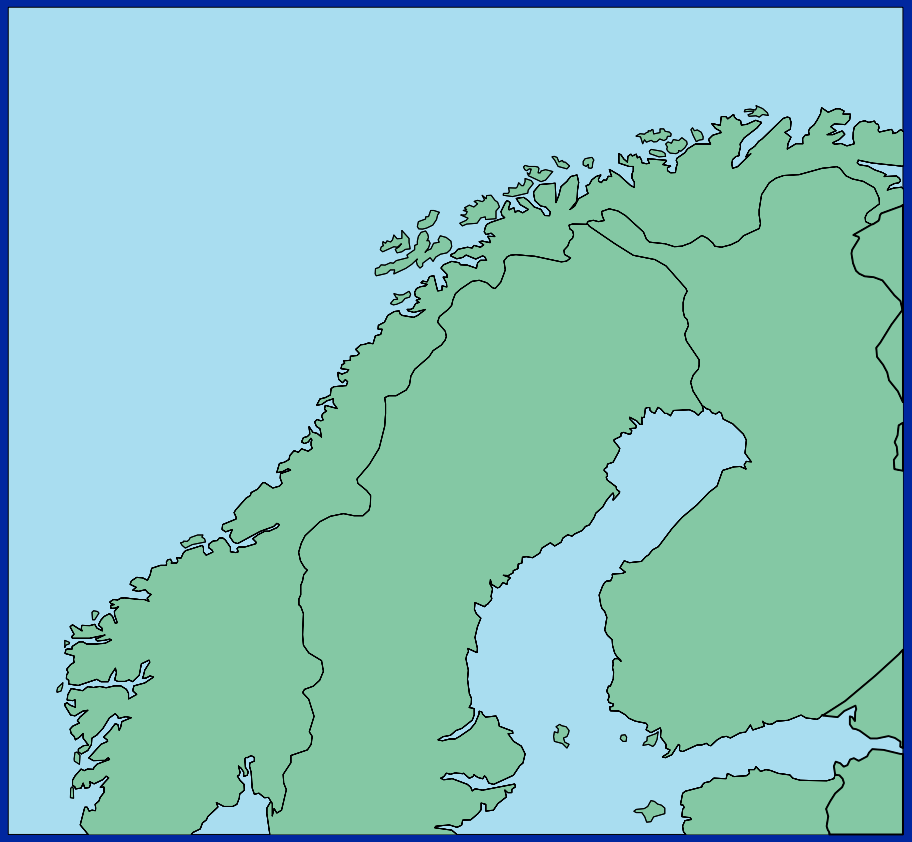
- NAVIGATIONAL FREEDOMS
- MARITIME ZONES
- BASELINES

BASELINES

- NORMAL BASELINE
  - LOW WATER LINE
- EXCEPTIONS
  - STRAIGHT BASELINES
  - BAYS
  - ARCHIPELAGIC BASELINES

STRAIGHT BASELINES

- DEEPLY INDENTED OR CUT INTO
- FRINGING ISLANDS ALONG THE COAST IN ITS IMMEDIATE VICINITY
- UNSTABLE COASTLINE
- SUBSEQUENT REGRESSION



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

STRAIGHT BASELINES

- LOSC -- NO GUIDELINES
  - SPECIFIC
  - MAXIMUM

  DISTANCE FROM SHORE

  LENGTH

- U.S. POSITION

- FISHERIES CASE -- 45 NM ACCEPTED ONLY CASE
  - HISTORIC-ECONOMIC FACTORS

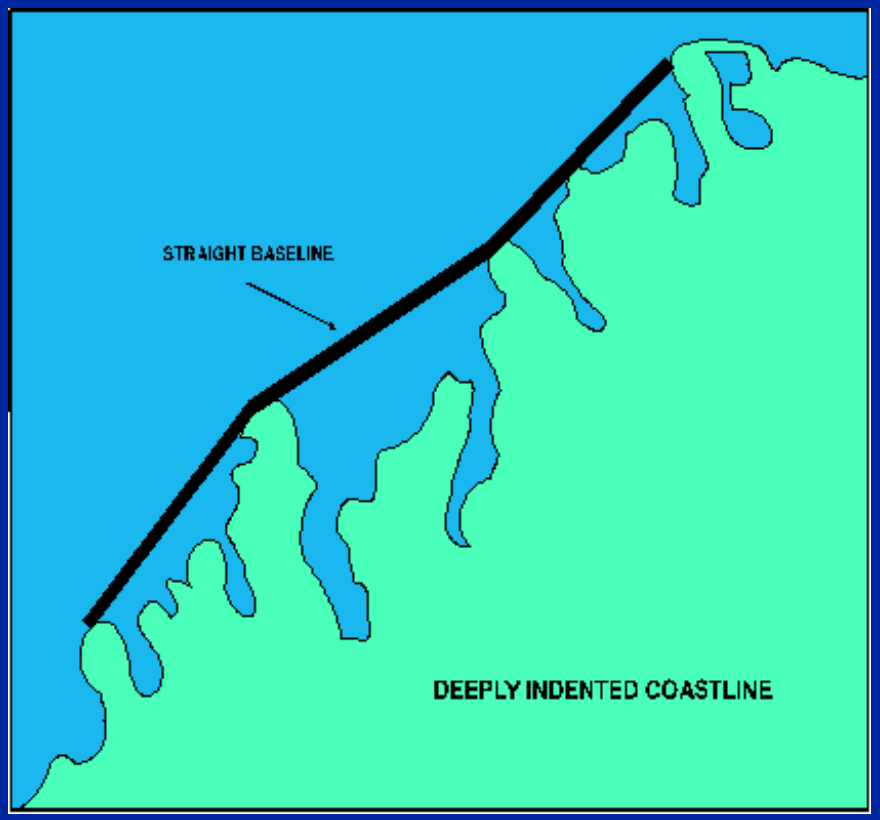
STRAIGHT BASELINES

- MUST NOT DEPART TO APPRECIABLE EXTENT FROM DIRECTION OF COAST
- WATERS WITHIN - CLOSELY LINKED TO THE LAND
- PUBLISHED ON CHARTS OR GEOGRAPHIC COORDINATES
- LOW TIDE ELEVATIONS
- CUT OFF OTHER STATES TERRITORIAL SEA OR EEZ

DEEPLY INDENTED STRAIGHT BASELINES

U. S. POSITION

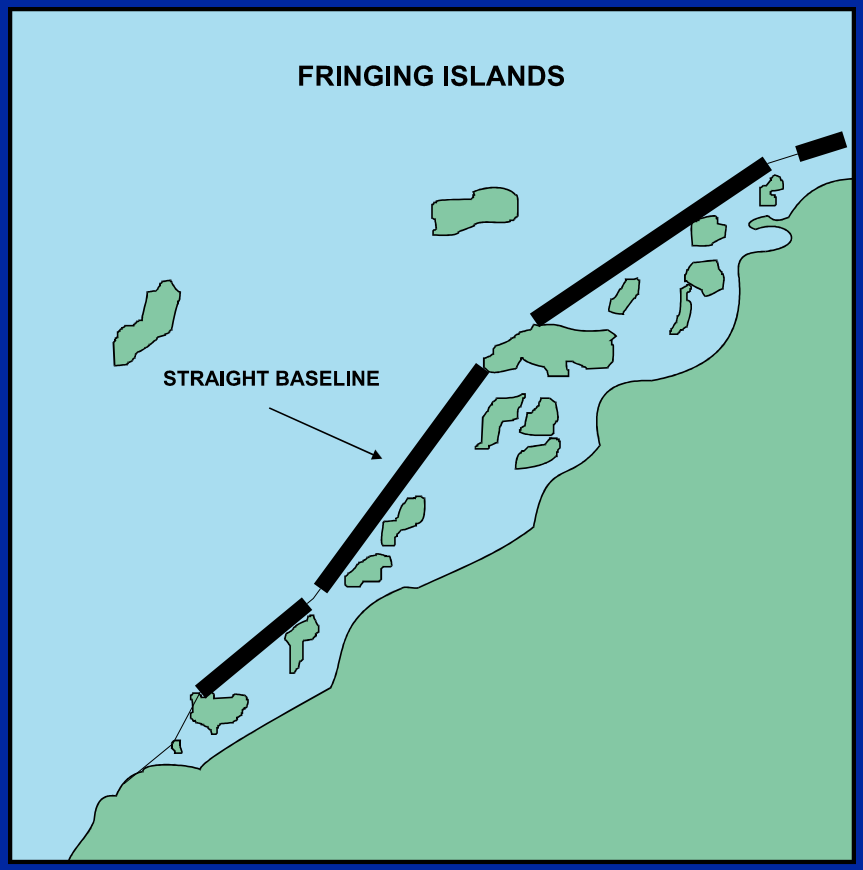
- 3 OR MORE IN CLOSE PROXIMITY
- DEPTH GREATER THAN 1/2 PROPOSED BASELINE



FRINGING ISLANDS STRAIGHT BASELINES

U. S. POSITION

- GENERAL DIRECTION
- WITHIN 24 NM OF COAST
- 24 NM BASELINES
- 50% OF COASTLINE MASKED



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

STRAIGHT BASELINES

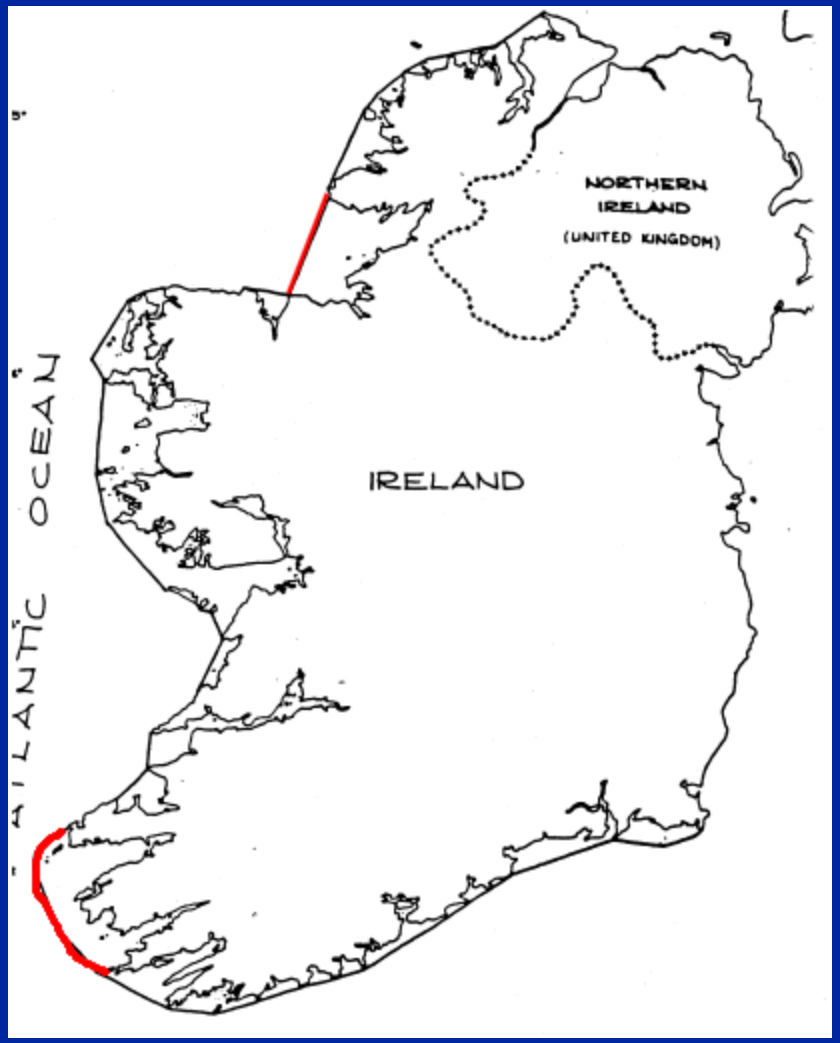
- UNSTABLE COASTLINE • RIVER DELTA • EXAMPLES--MISSISSIPPI, NILE, GANGES • LOW WATER LINE • UNAFFECTED BY SUBSEQUENT REGRESSION
- MOUTHS OF RIVERS
- JURIDICAL AND HISTORIC BAYS

IMPACT OF STRAIGHT BASELINES

- INTERNAL WATERS
- EXTENDS MARITIME ZONES SEAWARD
- RESTRICTS MOBILITY AND FLEXIBILITY

BASELINE EXAMPLE

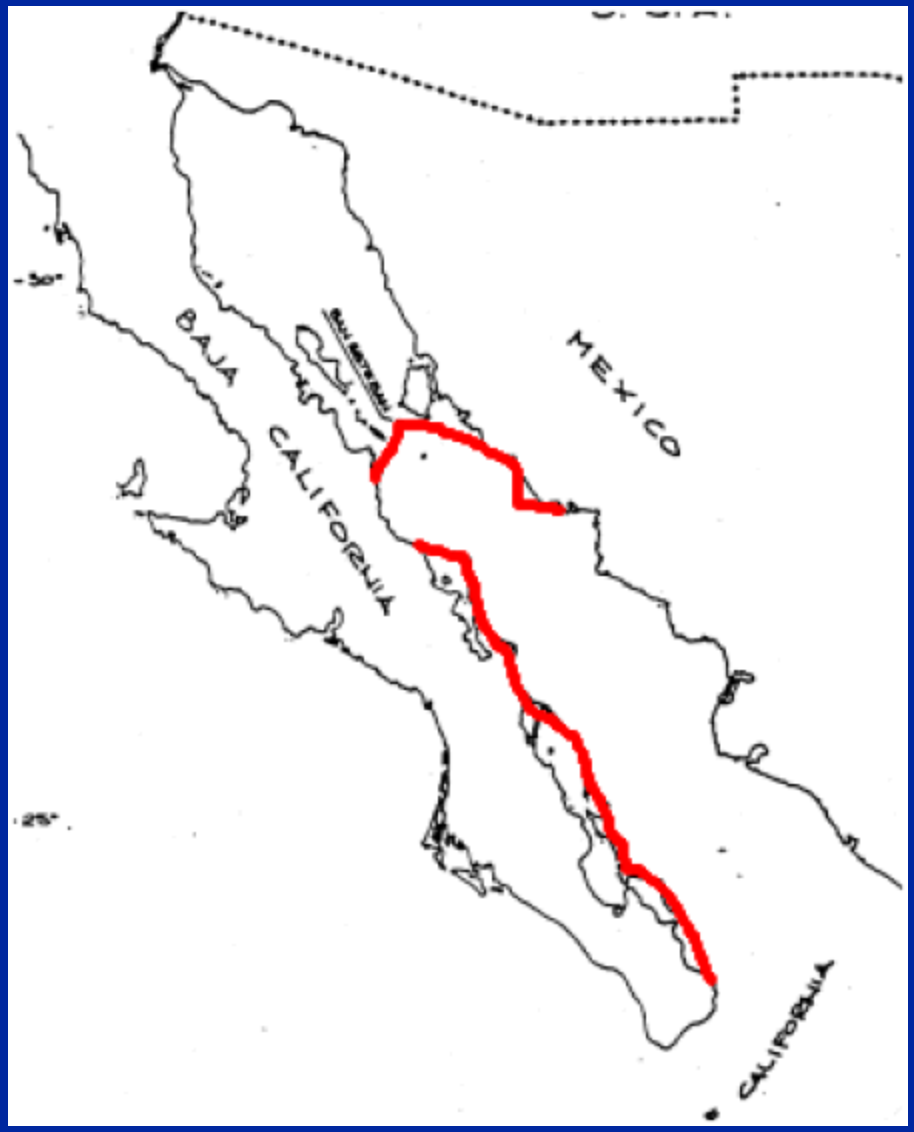
IRELAND



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

BASELINE EXAMPLE

BAJA, CALIFORNIA/ MEXICO

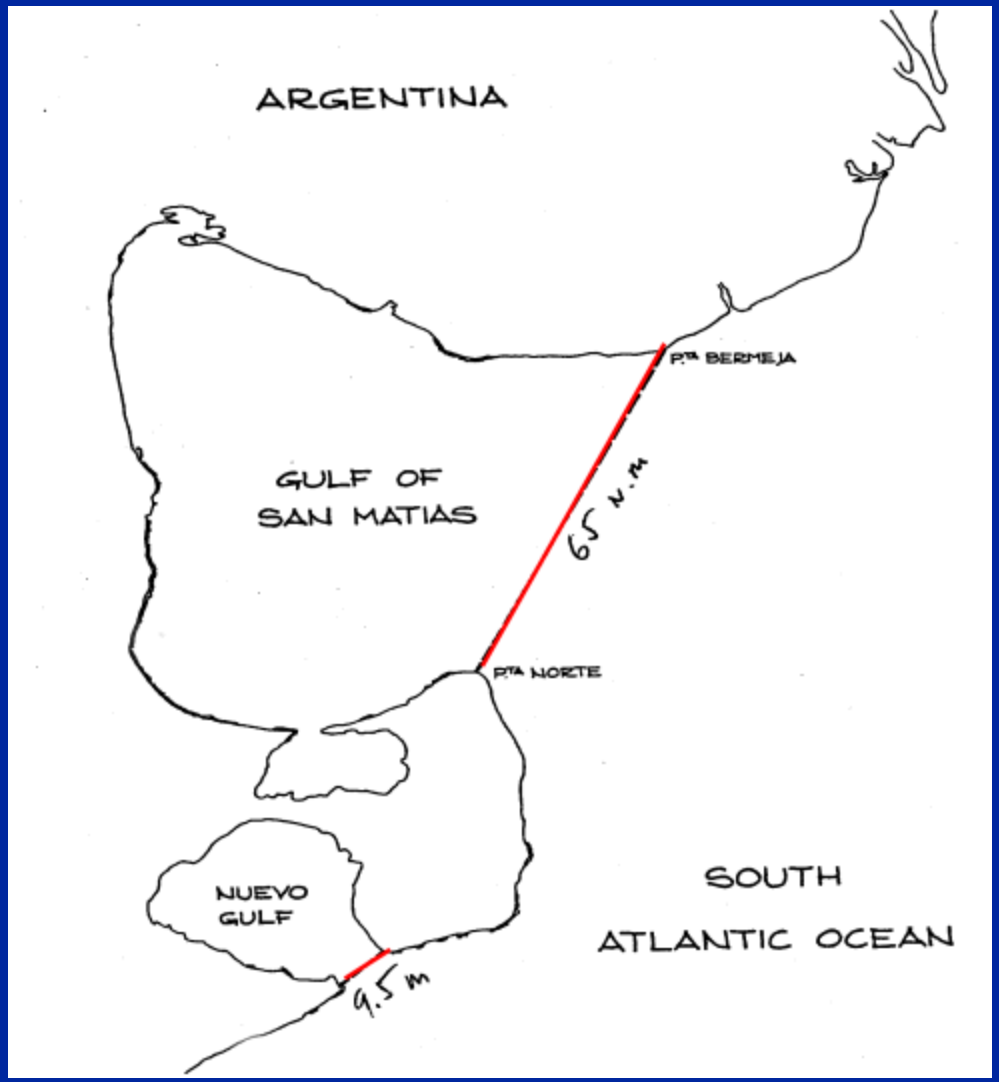


NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

BASELINE EXAMPLE

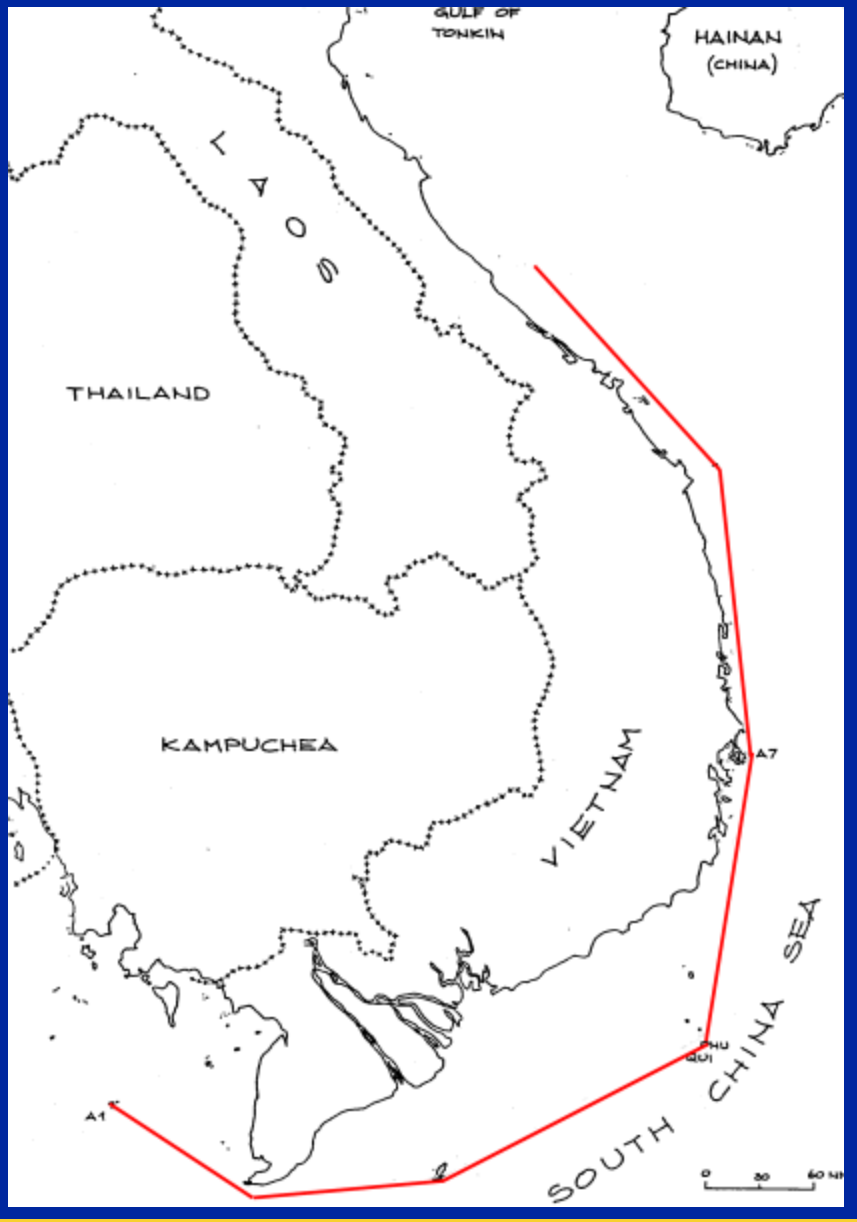
ARGENTINA



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

BASELINE EXAMPLE

VIETNAM



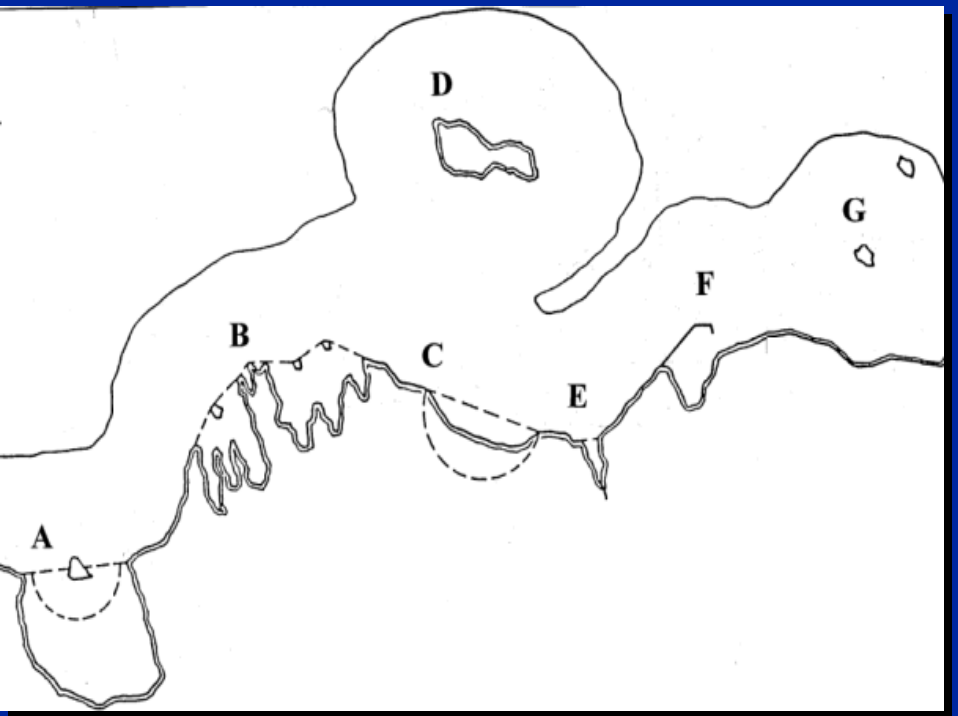
NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

SPECIAL RULES

- REEFS
- SEAWARD OF LOW-WATER LINE
- PORTS
- OUTERMOST PERMANENT HARBOR WORKS

BASELINES



On the rest of the coast the baseline is the low-water mark.

A. Indentation is larger than a semi-circle whose diameter is two closing lines, and is therefore a bay. Thus bay closing lines (which total less than 24 miles) are baselines.

B. Straight baseline on indented coast fringed with islands.

C. Indentation is smaller than the area of semi-circle drawn on closing line. Therefore it is not a bay.

D. An island generating its own territorial sea.

E. Baseline is a line drawn across the mouth of the river that flows directly into the sea.

F. Harbour works forming part of the baseline.

G. Low tide elevations. One is less than 12 miles from the coast and therefore forms the baseline. The other is more than 12 miles and therefore does not affect the construction of the baseline.

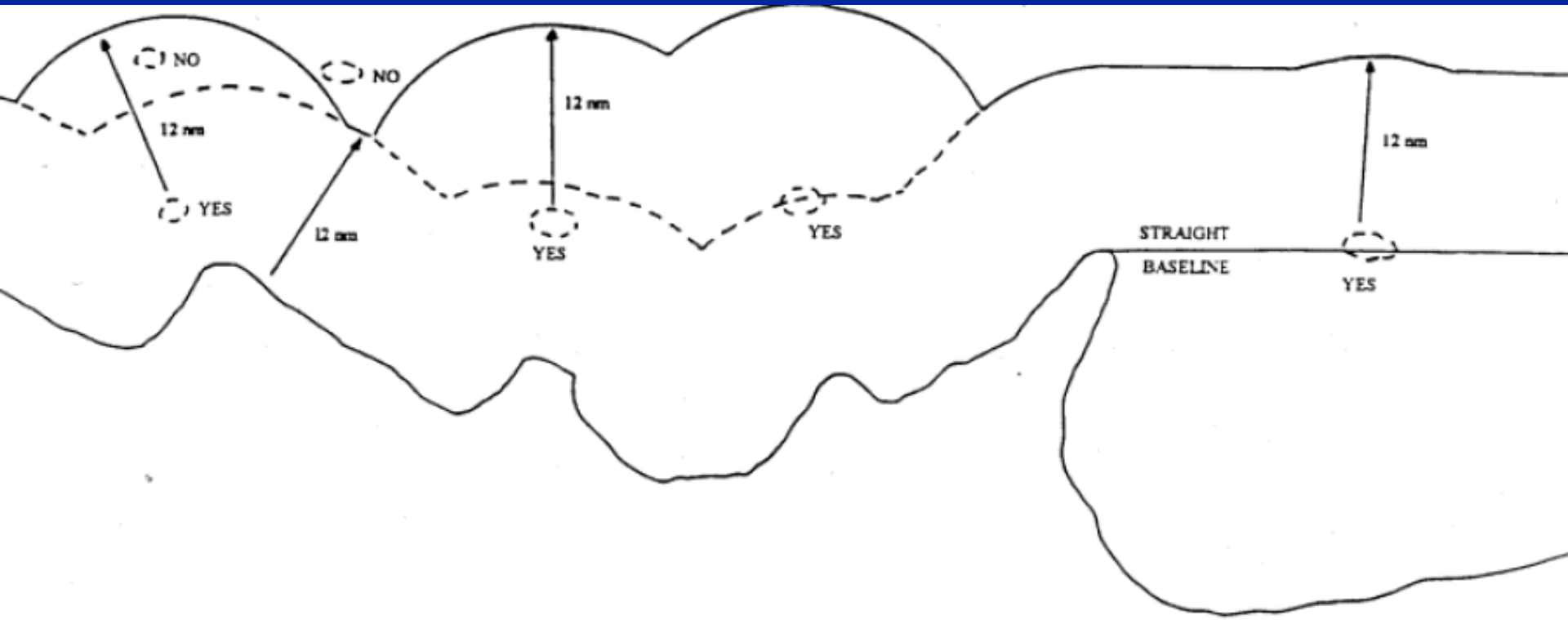
LOW TIDE ELEVATIONS

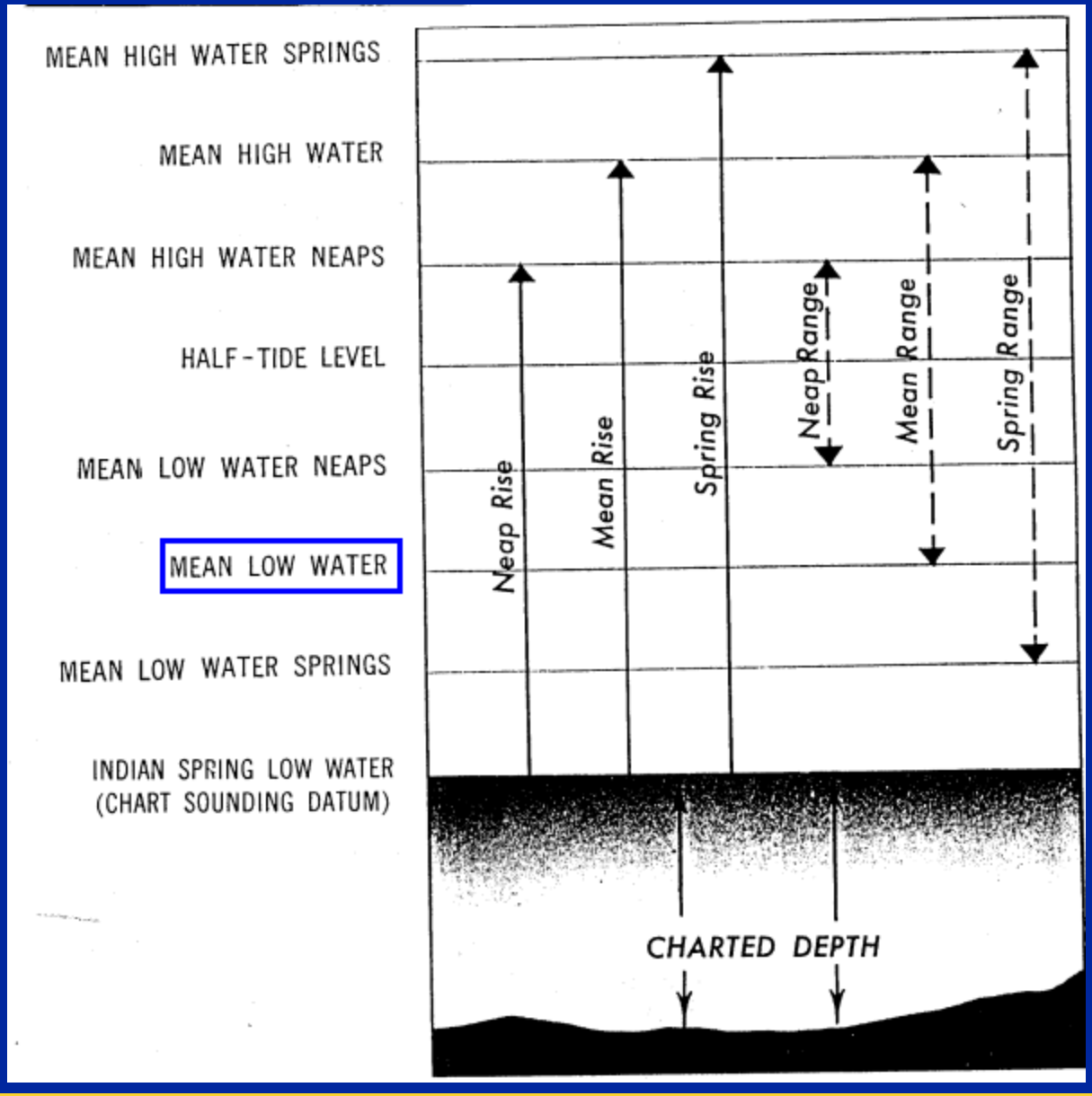
- WHOLLY WITHIN TERRITORIAL SEA DRAWN FROM MAINLAND OR ISLAND

ISLANDS AND ROCKS

- SUSTAIN HUMAN HABITATION OR ECONOMIC LIFE
- TERRITORIAL SEA ONLY FOR ROCK, NO EEZ OR CONTINENTAL SHELF

BASELINES



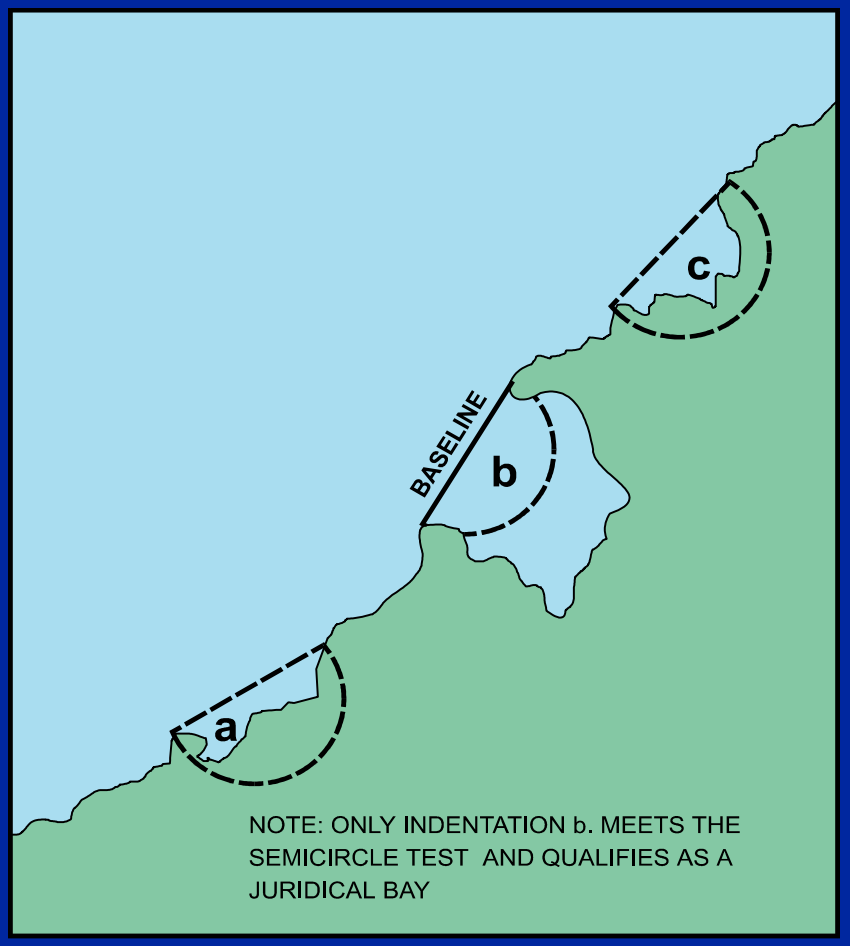


NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

JURIDICAL BAY

- WELL-MARKED INDENTATION
- LAND-LOCKED WATERS
- MORE THAN MERE CURVATURE
- AREA MUST BE EQUAL TO OR LARGER THAN SEMI-CIRCLE
- CLOSING LINE - CANNOT EXCEED 24 NM
- MAXIMUM AREA OF WATER



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

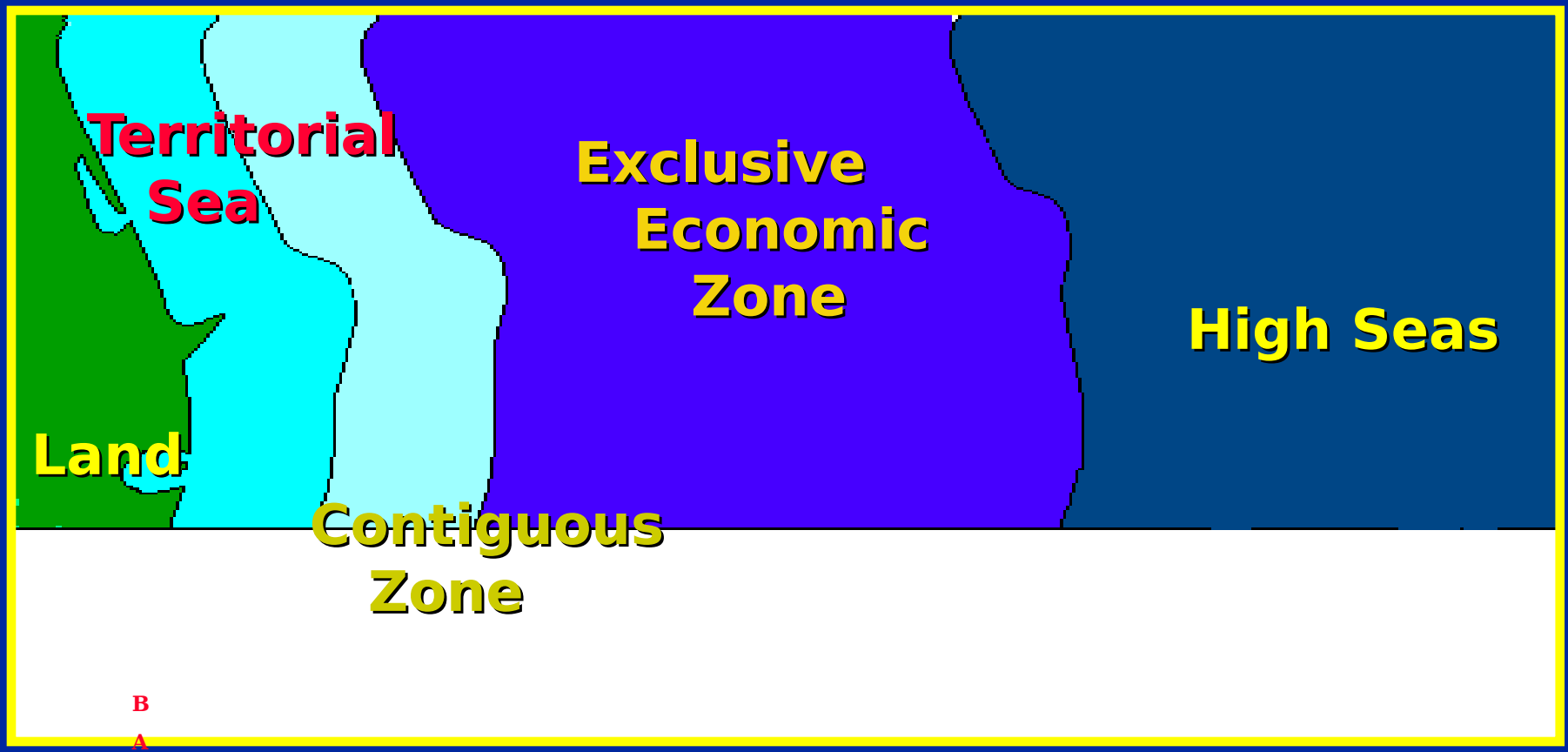
HISTORIC BAYS/WATERS

- LEGAL REQUIREMENTS
  - OPEN, EFFECTIVE, LONG-TERM & CONTINUOUS EXERCISE OF AUTHORITY
  - ACQUIESCENCE OF FOREIGN STATES
- INTERNAL WATERS
  - "WHICH WOULD NOT HAVE THAT CHARACTER WERE IT NOT FOR THE EXISTENCE OF AN HISTORIC TITLE."

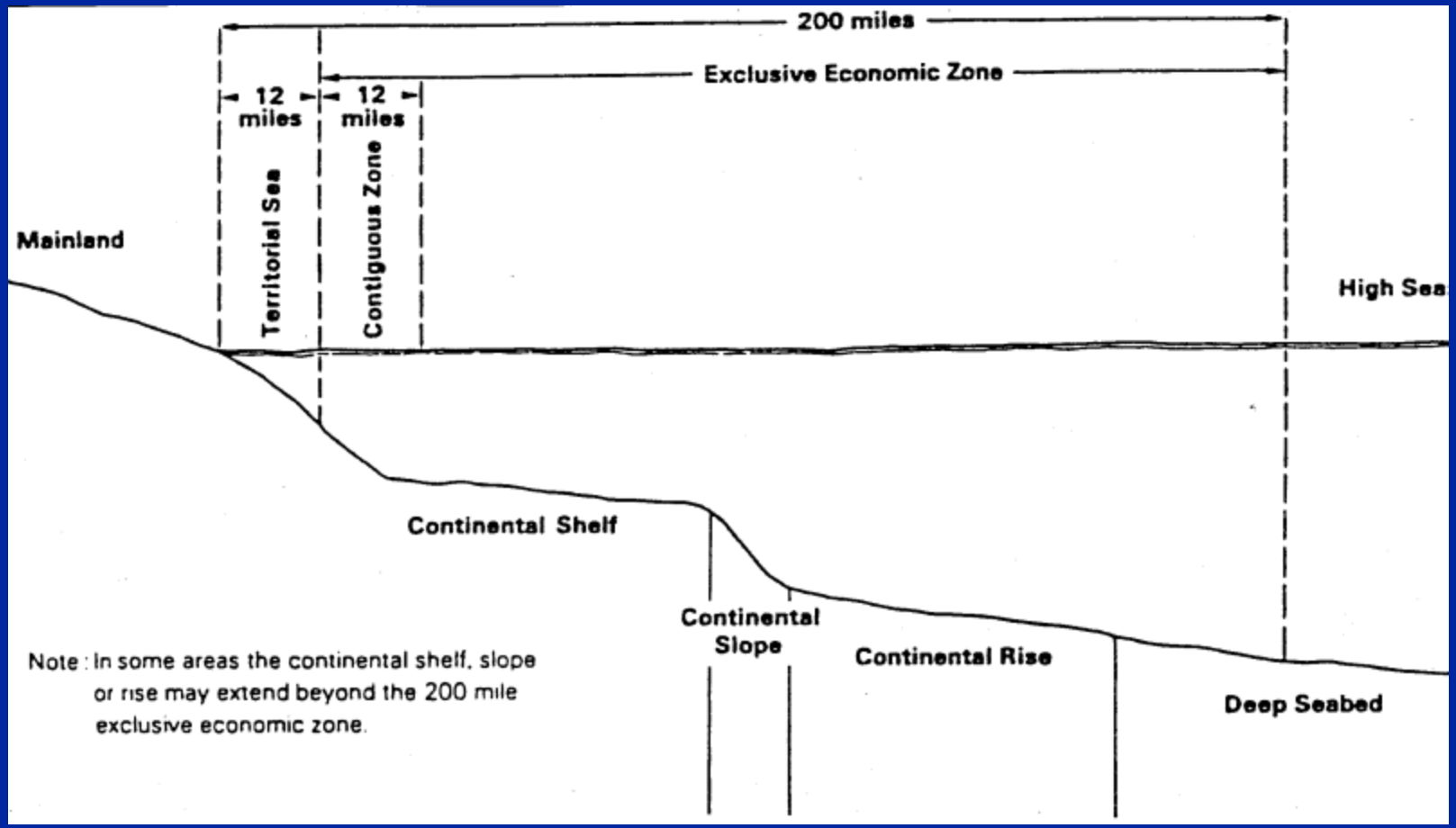
MARITIME ZONES

- INTERNAL WATERS
- 12 NM TERRITORIAL SEA
- 24 NM CONTIGUOUS ZONE
- 200 NM EXCLUSIVE ECONOMIC ZONE (EEZ)
- HIGH SEAS
- ARCHIPELAGIC WATERS
- CONTINENTAL SHELF
- DEEP SEABED

MARITIME ZONES

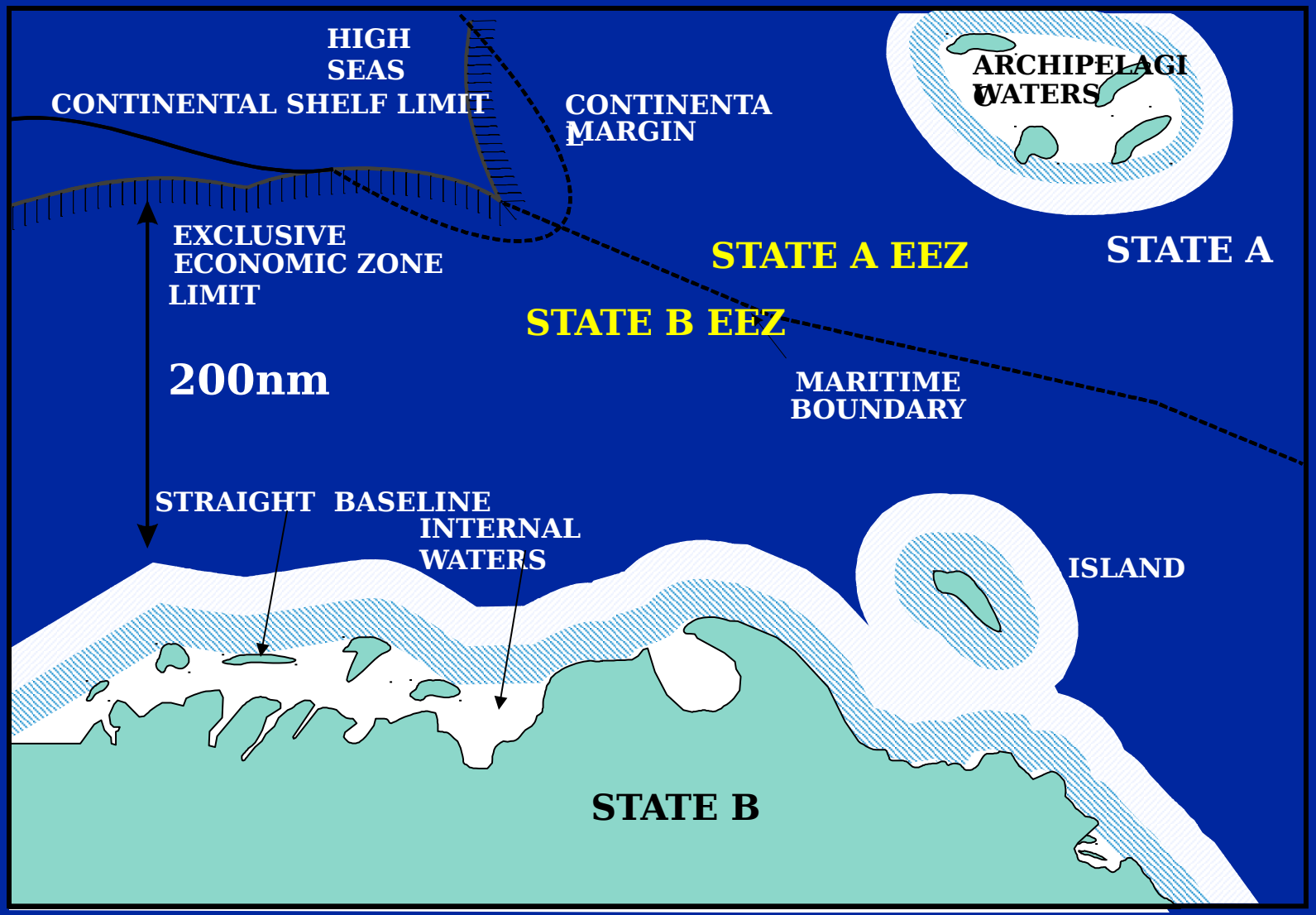


MARITIME ZONES



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

INTERNAL WATERS

- WATERS LANDWARD OF THE BASELINE
- JURIDICAL BAYS
- HISTORIC WATERS
- NO RIGHT OF PASSAGE (WITHOUT CONSENT)

TERRITORIAL SEA

- 12NM
- COMPLETE SOVEREIGNTY
- SUBJECT TO INNOCENT PASSAGE, TRANSIT PASSAGE & ARCHIPELAGIC SEA LANES PASSAGE & PROTECTION OF THE MARINE ENVIRONMENT
- AIRSPACE, SEABED & SUBSOIL

CONTIGUOUS ZONE

- 24 NM
- CUSTOMS, FISCAL, IMMIGRATION, & SANITARY LAWS & REGULATIONS
    - THAT OCCUR WITHIN THE TERRITORIAL SEA
- NO SOVEREIGNTY
- HIGH SEAS FREEDOMS

200 NM MARITIME ZONES

NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

EXCLUSIVE ECONOMIC ZONE

- 200 NM
- SOVEREIGN RIGHTS
  - EXPLORING, EXPLOITING, CONSERVING & MANAGING LIVING AND NON-LIVING RESOURCES
- BOARD, INSPECT, ARREST & INSTITUTE JUDICIAL PROCEEDINGS TO ENSURE COMPLIANCE
- SUBJECT TO INTERNATIONAL LAW REGARDING IMMUNE VESSELS
- NO IMPRISONMENT OR CORPORAL PUNISHMENT UNLESS AGREEMENT

EXCLUSIVE ECONOMIC ZONE

- JURISDICTION
- ARTIFICIAL ISLANDS •SAFETY Z0NES
- MARINE SCIENTIFIC RESEARCH (MSR)
- PROTECTION & PRESERVATION OF MARINE ENVIRONMENT
- ARTICLE 236 SOVEREIGN IMMUNE VESSELS
- “DUE REGARD”

HIGH SEAS

- NO EXERCISE OF SOVEREIGNTY
- OPEN TO ALL STATES
- FREEDOM OF MOVEMENT & OPERATION -- ON, OVER AND UNDER
- “DUE REGARD”

HIGH SEAS FREEDOM

- EXAMPLES • NAVIGATION & OVERFLIGHT • LAY SUBMARINE CABLES & PIPELINES • CONSTRUCT ARTIFICIAL ISLANDS & OTHER INSTALLATIONS • FISHING • SCIENTIFIC RESEARCH • WARSHIPS & MILITARY AIRCRAFT

FISHING RIGHTS ON THE HIGH SEAS

- TREATY OBLIGATIONS
- LOSC RIGHTS, DUTIES & INTERESTS OF COASTAL STATE
- LOSC OBLIGATIONS OF FLAG STATE

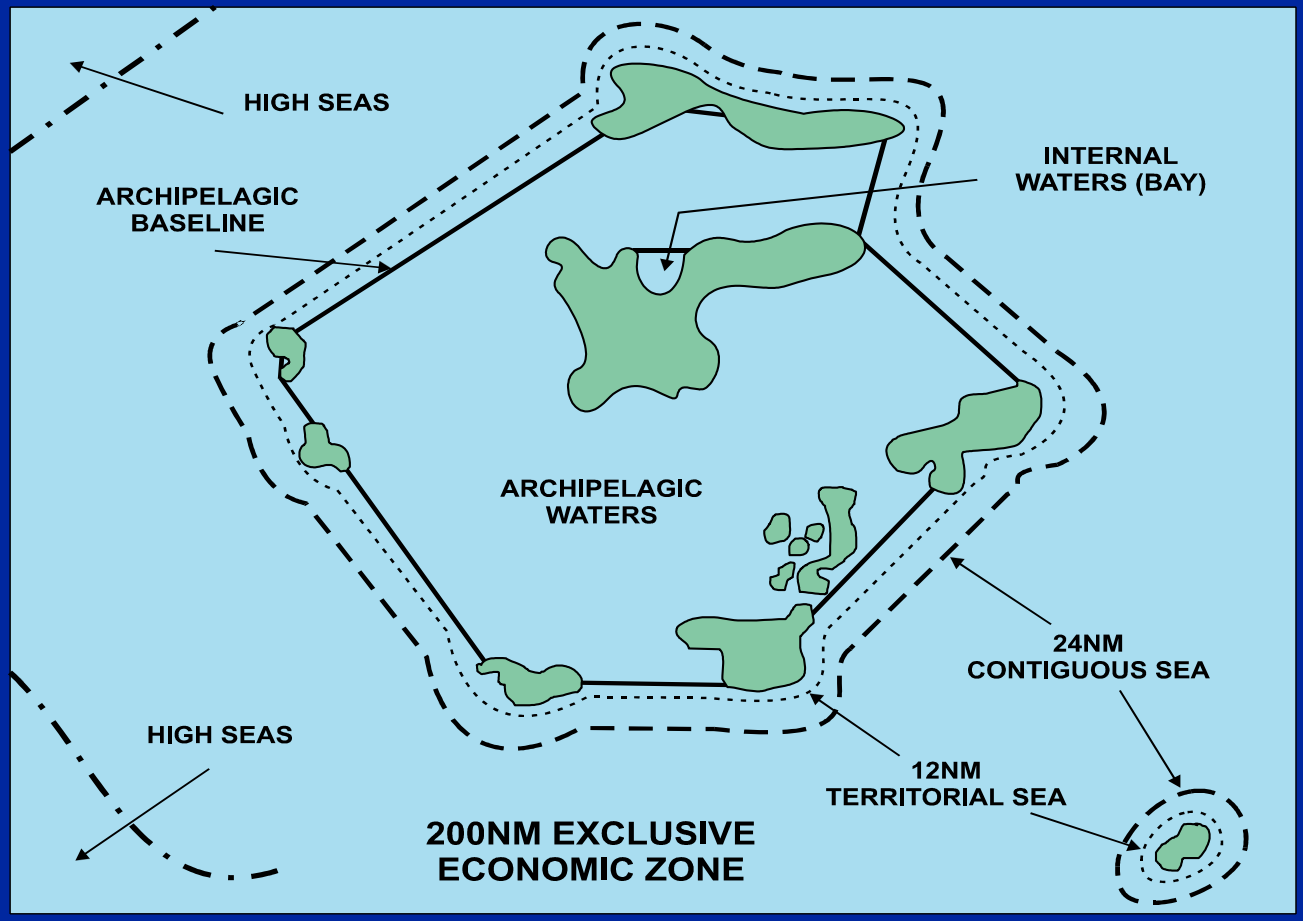
FLAG STATE JURISDICTION

- EXCLUSIVE FLAG STATE JURISDICTION
- DUTIES OF FLAG STATE
- ADMINISTRATIVE, TECHNICAL & SOCIAL MATTERS OF VESSEL & CREW
- MAINTAIN REGISTER
- ENSURE SAFETY AT SEA
- INVESTIGATE CASUALTIES & NAVIGATIONAL INCIDENTS

UNIVERSAL JURISDICTION

- TRANSPORT OF SLAVES
- PIRACY
- INTERNATIONAL NARCOTICS TRAFFIC
- UNAUTHORIZED BROADCASTING
- RIGHT OF APPROACH & VISIT

ARCHIPELAGIC BASELINES



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

ARCHIPELAGIC WATERS

- GROUP OF ISLANDS, … INTERCONNECTING WATERS AND OTHER NATURAL FEATURES WHICH ARE SO CLOSELY INTERRELATED THAT SUCH ISLANDS, WATERS AND OTHER NATURAL FEATURES FORM AN INTRINSIC GEOGRAPHICAL, ECONOMIC & POLITICAL ENTITY, OR WHICH HISTORICALLY HAVE BEEN REGARDED AS SUCH.

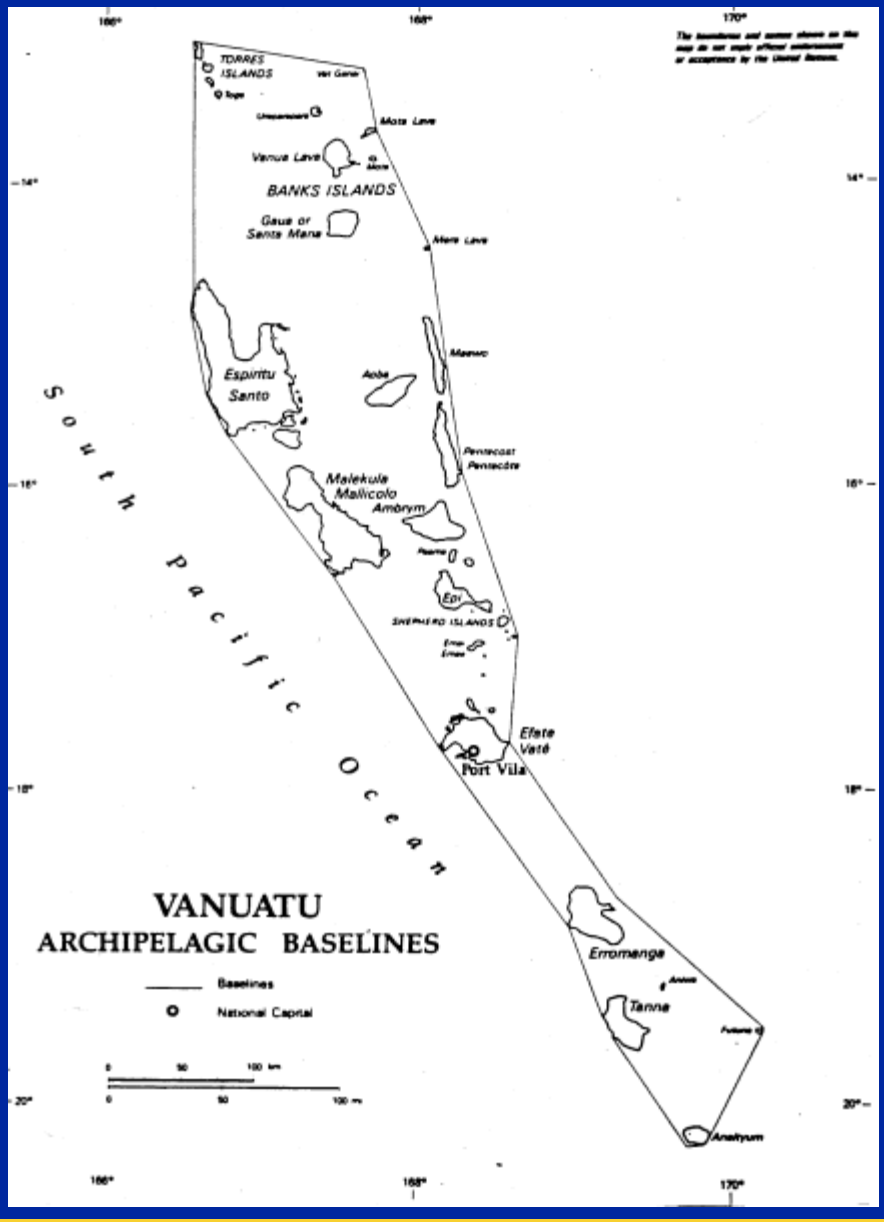
- NOT CONTINENTAL STATES (INCLUDING DEPENDENCIES)

ARCHIPELAGIC BASELINES

- STRAIGHT BASELINES JOINING OUTERMOST POINTS
- **WATER TO LAND RATIO (MINIMUM 1:1, MAXIMUM 9:1)**
- BASELINES MAY EXCEED 100 NM IN LENGTH (EXCEPT 3% UP TO 125 NM)
- GENERAL CONFIGURATION OF ARCHIPELAGO

ARCHIPELAGIC BASELINE

VANUATU



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

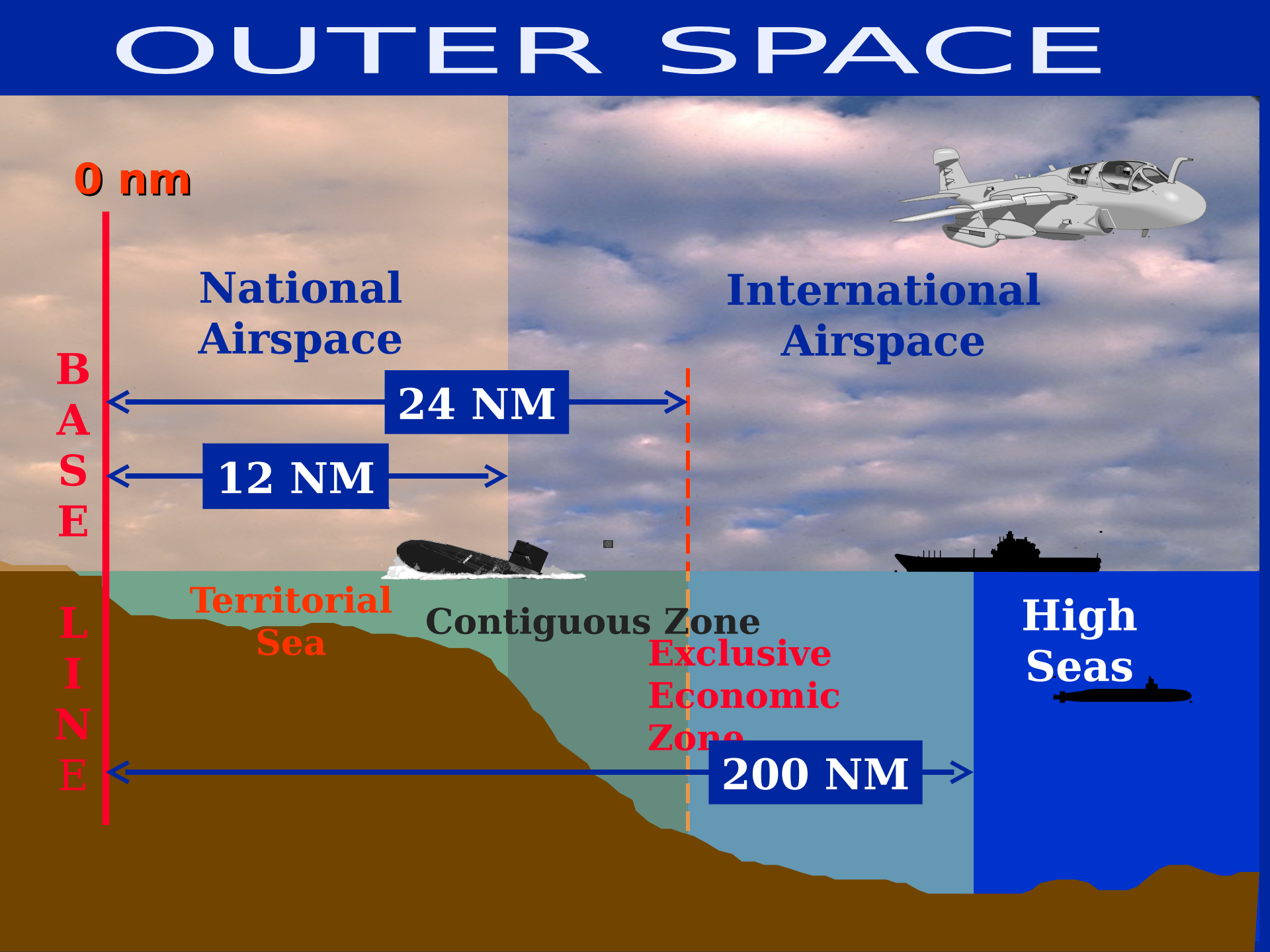
COMNAVMETOCCOM-COUNSEL

ARCHIPELAGIC WATERS & AIRSPACE

- ARCHIPELAGIC STATE SOVEREIGNTY
- RIGHT OF INNOCENT PASSAGE
- ARCHIPELAGIC SEA LANES & AIR ROUTES
- NORMAL PASSAGE ROUTES USED FOR INTERNATIONAL NAVIGATION

SURVEY OF THE LOS

MARITIME ZONES
COASTAL STATE RIGHTS
VS.
NAVIGATIONAL RIGHTS


OUTER SPACE
0 nm
National Airspace
International Airspace
BASE LINE
24 NM
12 NM
Territorial Sea
Contiguous Zone
Exclusive Economic Zone
High Seas
200 NM

KINDS OF TRANSIT RIGHTS

- ***INNOCENT PASSAGE*** THROUGH TERRITORIAL SEAS AND ARCHIPELAGIC WATERS
- ***TRANSIT PASSAGE*** THROUGH INTERNATIONAL STRAITS
- ***ARCHIPELAGIC SEA LANES PASSAGE*** THROUGH ARCHIPELAGIC SEA LANES
- ***HIGH SEAS FREEDOMS*** (EEZ)

RIGHT OF INNOCENT PASSAGE

- INNOCENT PASSAGE THROUGH TERRITORIAL SEA • SHIPS • NOT AIRCRAFT • SUBMARINES MUST NAVIGATE ON SURFACE & SHOW FLAG
- NOT PREJUDICIAL TO PEACE, GOOD ORDER & SECURITY

RIGHT OF INNOCENT PASSAGE

- CONTINUOUS AND EXPEDITIOUS PASSAGE
- ALL SHIPS, REGARDLESS OF CARGO OR MEANS OF PROPULSION
  - NO PRIOR NOTICE OF CONSENT REQUIRED
- TEMPORARY SUSPENSION OF INNOCENT PASSAGE
  - ESSENTIAL FOR SECURITY
  - PUBLISHED & NON-DISCRIMINATORY

RIGHT OF INNOCENT PASSAGE

- COASTAL STATE LAWS & REGULATIONS
  - ACCEPTED INT'L TO COLLISION AT CONSTRUCTION, OR EQUIPMENT OF ACCEPTED STANDARDS
  - COMPLY WITH GENERALLY REGULATIONS RELATING SEA
  - NO REGULATION OF DESIGN, MANNING, FOREIGN SHIPS, UNLESS INTERNATIONAL RULES OR
  - ARTICLE 21

RIGHT OF INNOCENT PASSAGE

- COASTAL STATE ENFORCEMENT AUTHORITY • APPROPRIATE ACTION • MAY INCLUDE USE OF FORCE • SOVEREIGN IMMUNE VESSELS • SOLE REMEDY - REQUIRE IMMEDIATE DEPARTURE • SELF DEFENSE • BLACK SEA BUMPING • PERU 1992

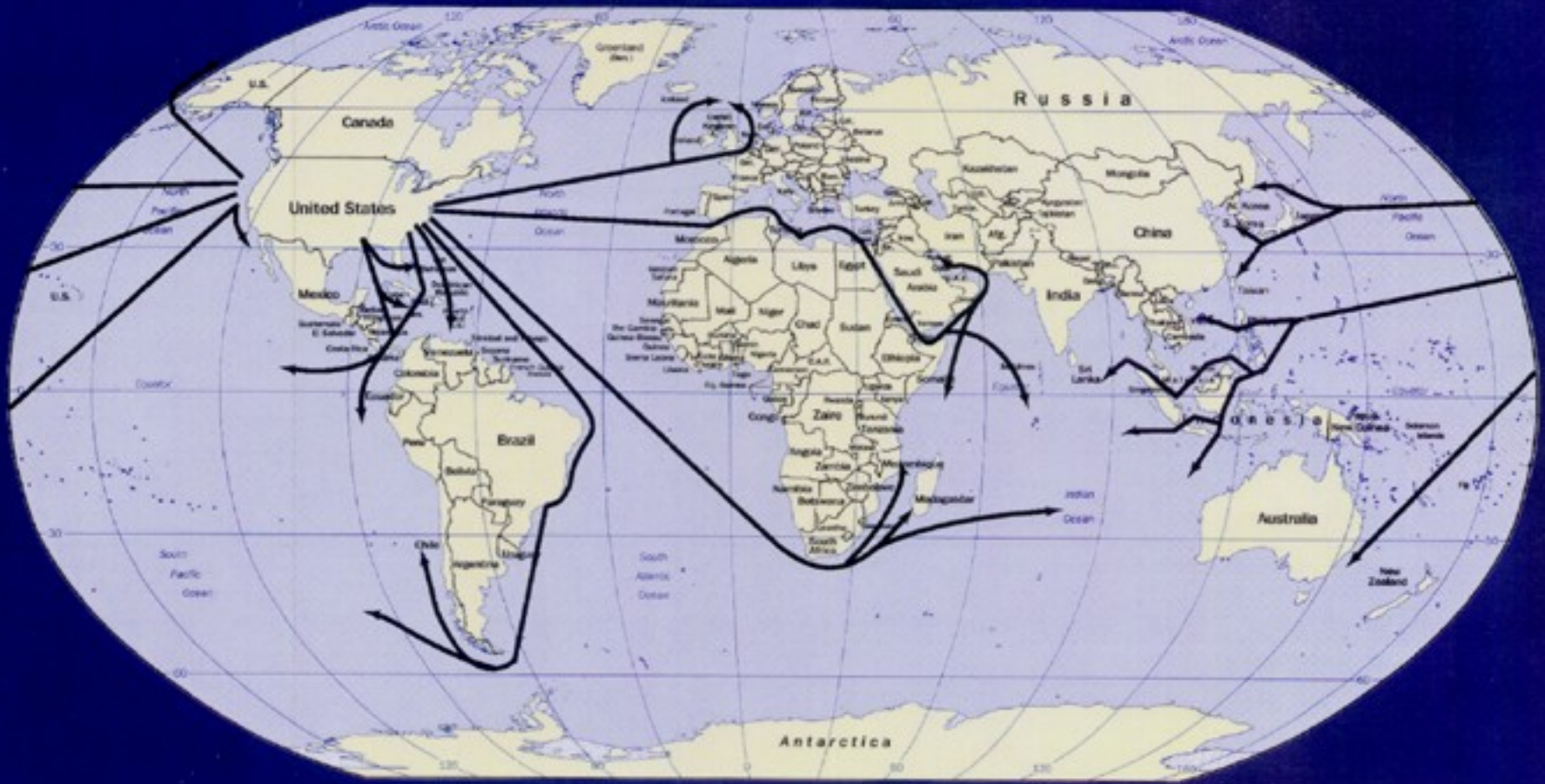
INNOCENT PASSAGE PERMITS
(ARTICLES 18, 21, 22)

- UNANNOUNCED CONTINUOUS AND EXPEDITIOUS PASSAGE
- STOPPING AND ANCHORING*
- COASTAL STATE NON-DISCRIMINATORY SUSPENSION
- COASTAL STATE REGULATION OF MARITIME TRAFFIC
- DESIGNATION OF SEA LANES AND TRAFFIC SEPARATION SCHEMES
- SOVEREIGN IMMUNITY OF WARSHIPS

INNOCENT PASSAGE PROHIBITS
(ARTICLES 19, 20)

- THREAT OR USE OF FORCE
- WEAPONS EXERCISE OR PRACTICE
- FLIGHT
- INTELLIGENCE COLLECTION
- RESEARCH OR SURVEY
- SUBMERGED SUBMARINES
- POLLUTION
- INTERFERENCE WITH COMMUNICATION
- PROPAGANDA
- LOADING OR UNLOADING OF ANY COMMODITY, CURRENCY, OR PERSON CONTRARY TO COASTAL STATE LAW
- FISHING

STRATEGIC STRAITS



PASSAGE THROUGH INTERNATIONAL STRAITS

- TRANSIT PASSAGE
- ARCHIPELAGIC SEA LANE PASSAGE
- NON-SUSPENDABLE INNOCENT PASSAGE
- REGIMES ONLY APPLY IF NO HIGH SEAS/EEZ CORRIDOR OF SIMILAR CONVENIENCE & SUITABLE FOR NAVIGATION
- LONG-STANDING INTERNATIONAL CONVENTIONS (E.G. TURKISH STRAITS, MAGELLAN)
- MAN-MADE CANALS (E.G. PANAMA, SUEZ)

RIGHT OF TRANSIT PASSAGE INTERNATIONAL STRAITS

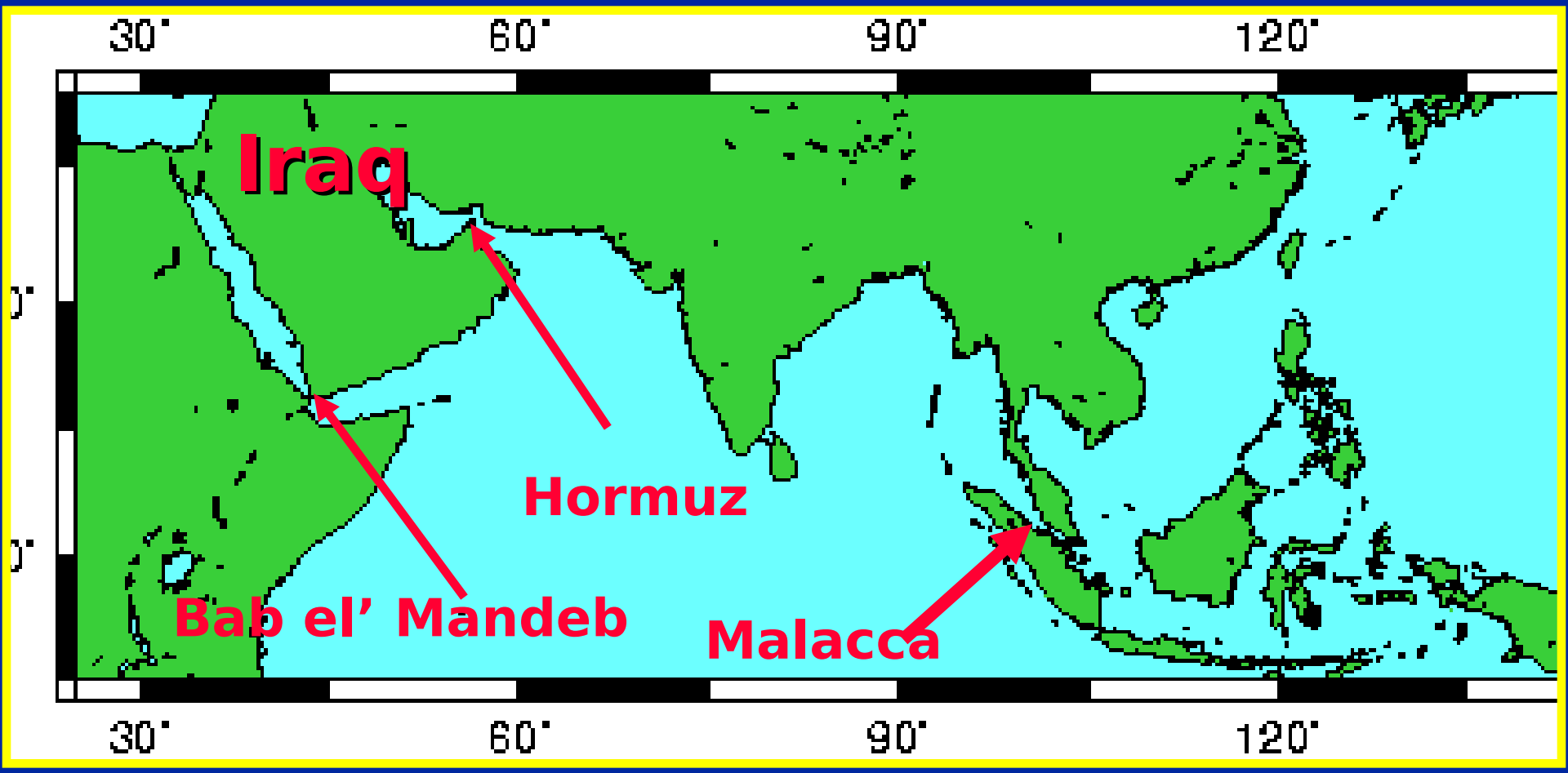
- CONNECT HIGH SEAS/EEZ TO ANOTHER PART OF HIGH SEAS/EEZ -- GEOGRAPHY DECISIVE CRITERIA
- SIMILAR CONVENIENCE • MESSINA EXCEPTION - NON-SUSPENDABLE INNOCENT PASSAGE
- OVER 100 STRAITS OVERLAPPED BY TERRITORIAL SEAS WHICH PREVIOUSLY HAD BEEN HIGH SEAS CORRIDORS
  - MANY STRAITS VITAL TO NAVIGATION & OVERFLIGHT

Proposed ATBA in the Strait of

Turkish Straits Issues

NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

TRANSIT PASSAGE
(ARTICLE 38)

- CONTINUOUS
- EXPEDITIOUS
- UNIMPEDED
- NON-SUSPENDABLE
- NAVIGATION
- OVER-FLIGHT
- IN THE NORMAL MODE

- NORMAL MODE:
  - **CONSISTENT W/ SOUND NAVIGATIONAL PRACTICES AND SECURITY OF THE FORCE**
  - **SUBMERGED**
  - **FORMATION STEAMING**
  - **LAUNCH AND RECOVERY OF AIRCRAFT**

WITH TRANSIT PASSAGE RIGHTS
WITHOUT TRANSIT PASSAGE RIGHTS
Arctic Ocean
North Pacific Ocean
South Atlantic Ocean
Indian Ocean
Equator
Iceland
Sweden
Norway
Finland
Ireland
Belarus
Poland
Ukraine
France
Spain
Portugal
Italy
Greece
Turkey
Kazakhstan
Mongolia
China
N. Korea
S. Korea
Japan
Iran
Afg.
Pakistan
India
Saudi Arabia
Morocco
Algeria
Libya
Egypt
Tunisia
Mauritania
Mali
Niger
Chad
Sudan
Ethiopia
Somalia
Nigeria
Congo
Zaire
Tanzania
Angola
Zambia
Mozambique
Zimbabwe
Namibia
Botswana
South Africa
Madagascar
Philippines
Indonesia
Australia
New Zealand
Papua New Guinea
Solomon Islands
Fiji

DUTIES OF SHIPS & AIRCRAFT DURING TRANSIT PASSAGE

- PROCEED WITHOUT DELAY
- REFRAIN FROM THREAT OR USE OF FORCE
- NO ACTIVITIES OTHER THAN NORMAL MODE OF CONTINUOUS & EXPEDITIOUS TRANSIT
- COMPLY WITH LOSC, PART III

DUTIES OF SHIPS AND AIRCRAFT IN TRANSIT PASSAGE (ARTICLE 39)

- SHIPS:
  - SHALL COMPLY WITH INTERNATIONAL REGULATIONS FOR SAFETY AT SEA, INCLUDING
  - COLREGS
- AIRCRAFT:
  - STATE AIRCRAFT “WILL NORMALLY COMPLY WITH SUCH SAFETY MEASURES” AND OPERATE WITH “DUE REGARD”
    - AND AT ALL TIMES MONITOR AIR TRAFFIC CONTROL FREQUENCY
  - CIVIL AIR MUST OBSERVE ICAO RULES OF THE AIR

RIGHTS & DUTIES OF STATES BORDERING STRAITS

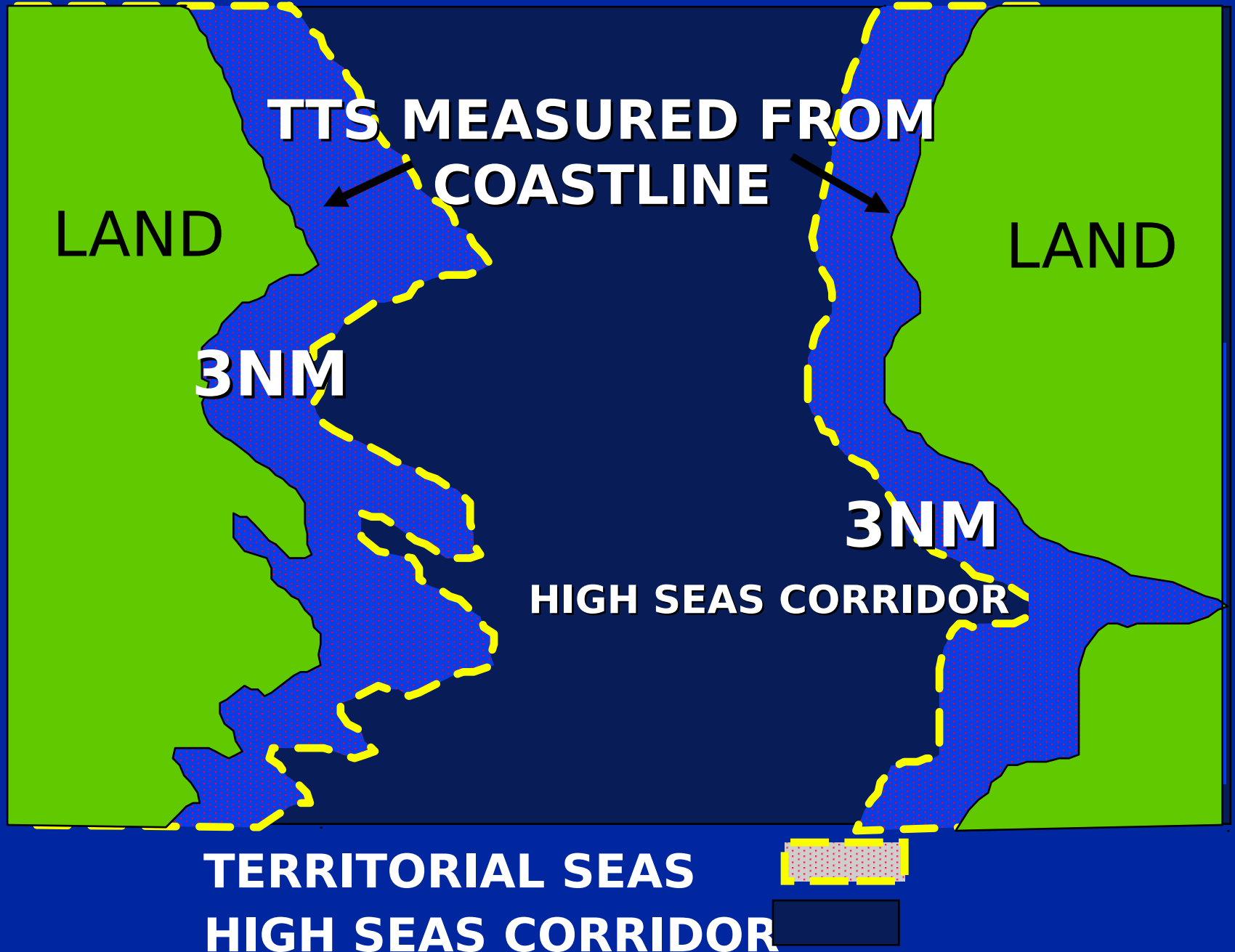
- TRANSIT PASSAGE NON-SUSPENDABLE IN PEACETIME
- TRAFFIC SEPARATION SCHEMES (IMO APPROVAL)
- NON-DISCRIMINATORY LAWS & REGULATION
  - NAVIGATION SAFETY/TRAFFIC REGULATION • POLLUTION CONTROL • FISHING PROHIBITION • LOADING & UNLOADING ANY COMMODITY, CURRENCY OR PERSON

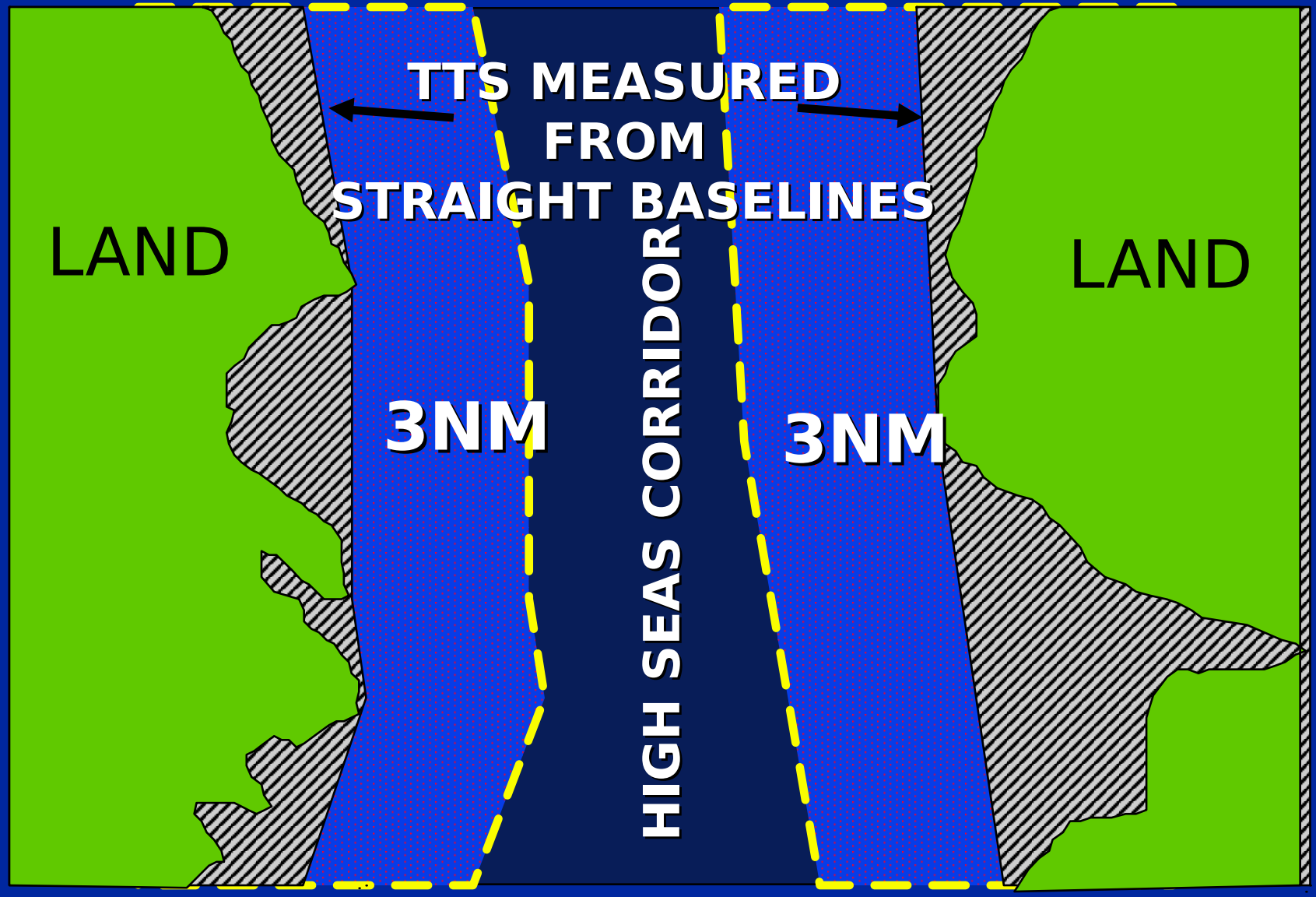
RIGHTS & DUTIES OF STATES BORDERING STRAITS

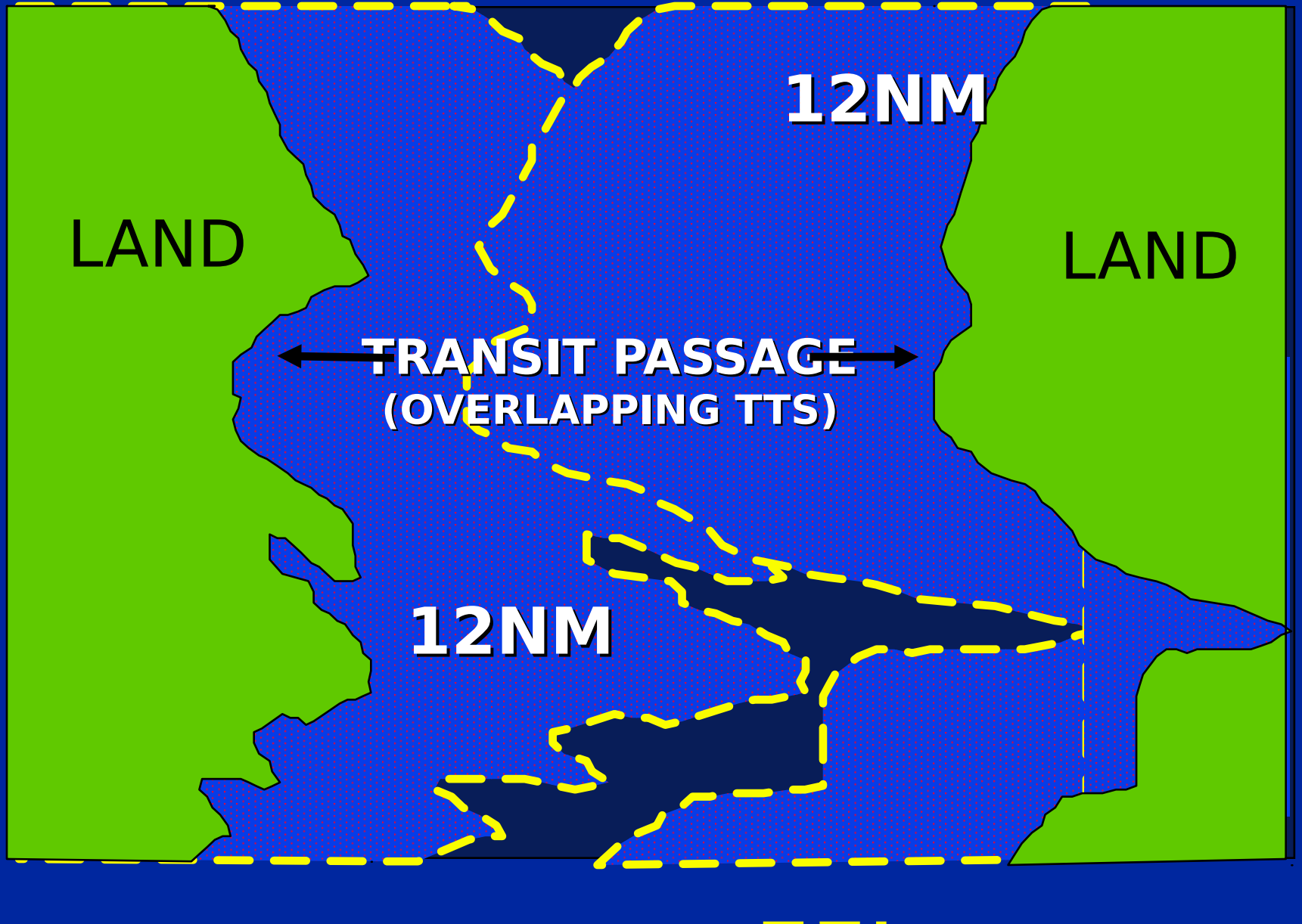
- CANNOT HAVE PRACTICAL EFFECT OF DENYING, HAMPERING, OR IMPAIRING TRANSIT PASSAGE
- SOVEREIGN IMMUNE VESSELS - FLAG STATE RESPONSIBILITY
- DANGER TO NAVIGATION OR OVERFLIGHT

JAPAN TERRITORIAL SEA CLAIMS

- CURRENT CLAIM IS 12NM, EXCEPT IN FIVE STRAITS WHERE 3NM CLAIMED
- PROVIDES FOR “HIGH SEAS CORRIDOR”
- INCREASE IN BREADTH OF TERRITORIAL SEA COULD RESULT IN RIGHT OF TRANSIT PASSAGE THROUGHOUT THE STRAIT


TTS MEASURED FROM COASTLINE
LAND
LAND
3NM
3NM
HIGH SEAS CORRIDOR
TERRITORIAL SEAS
HIGH SEAS CORRIDOR


TTS MEASURED
FROM
STRAIGHT BASELINES
LAND
LAND
3NM
3NM
HIGH SEAS CORRIDOR
INTERNAL WATERS:
HIGH SEAS CORRIDOR
TERRITORIAL SEAS


12NM
LAND
LAND
TRANSIT PASSAGE
(OVERLAPPING TTS)
12NM
TERRITORIAL SEAS
HIGH SEAS CORRIDOR

ARCHIPELAGIC SEA LANES PASSAGE -- STRAITS

- ARCHIPELAGIC SEA LANES PASSAGE APPLIES TO STRAITS WITHIN ARCHIPELAGIC WATERS
    - E.G. SUNDA & LUMBOK STRAITS INDONESIA DESIGNATED ARCHIPELAGIC SEA LANES

DEAD END STRAITS / MESSINA EXCEPTION

- NON-SUSPENDABLE INNOCENT PASSAGE
  - HIGH SEA/EEZ & TERRITORIAL SEA OF FOREIGN STATE
  - HIGH SEA/EEZ & HIGH SEA/EEZ - STRAIT FORMED BY ISLAND IF SIMILAR CONVENIENCE ROUTE OF EXISTS SEAWARD
  - EXAMPLE -- STRAITS OF TIRAN

NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

ARCHIPELAGIC SEA LANES PASSAGE

(Article 54)

Transit passage rules apply

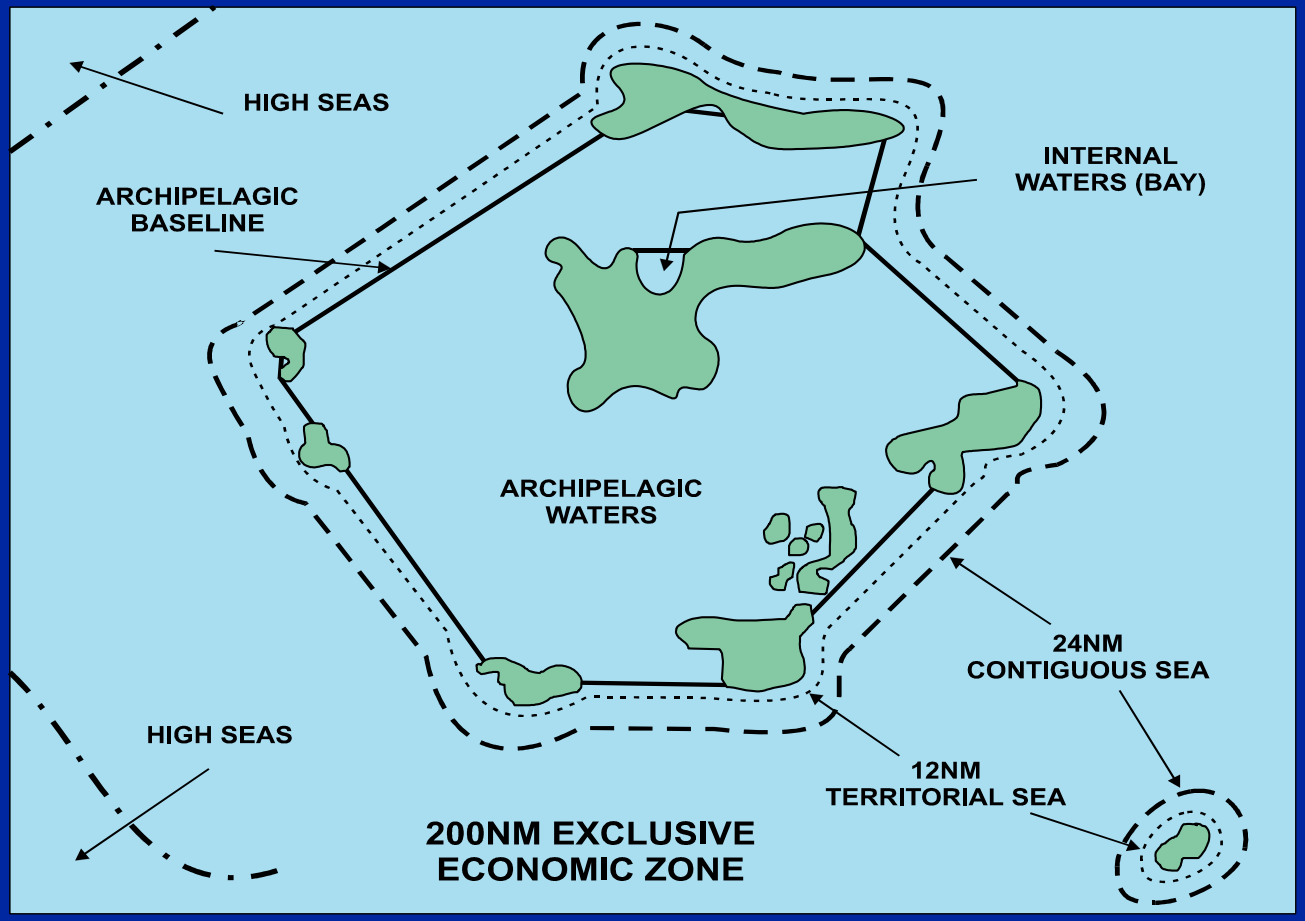
mutatis mutandis

THE SOVEREIGNTY OF THE ARCHIPELAGIC STATE

EXTENDS TO THE WATERS ENCLOSED BY THE ARCHIPELAGIC BASELINES,

BUT IS SUBJECT TO THE REGIMES OF INNOCENT AS WELL AS ARCHIPELAGIC SEA LANES PASSAGE

ARCHIPELAGIC BASELINES



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

ARCHIPELAGOES

- INNOCENT PASSAGE IN NON-SEA LANE ARCHIPELAGIC WATERS
- ARCHIPELAGIC SEA LANES PASSAGE IN ARCHIPELAGIC SEA LANES
  - NORMAL MODE
  - SUBMERGED SUBMARINES
  - NORMAL FLIGHT OPERATIONS

ARCHIPELAGIC SEA LANE PASSAGE

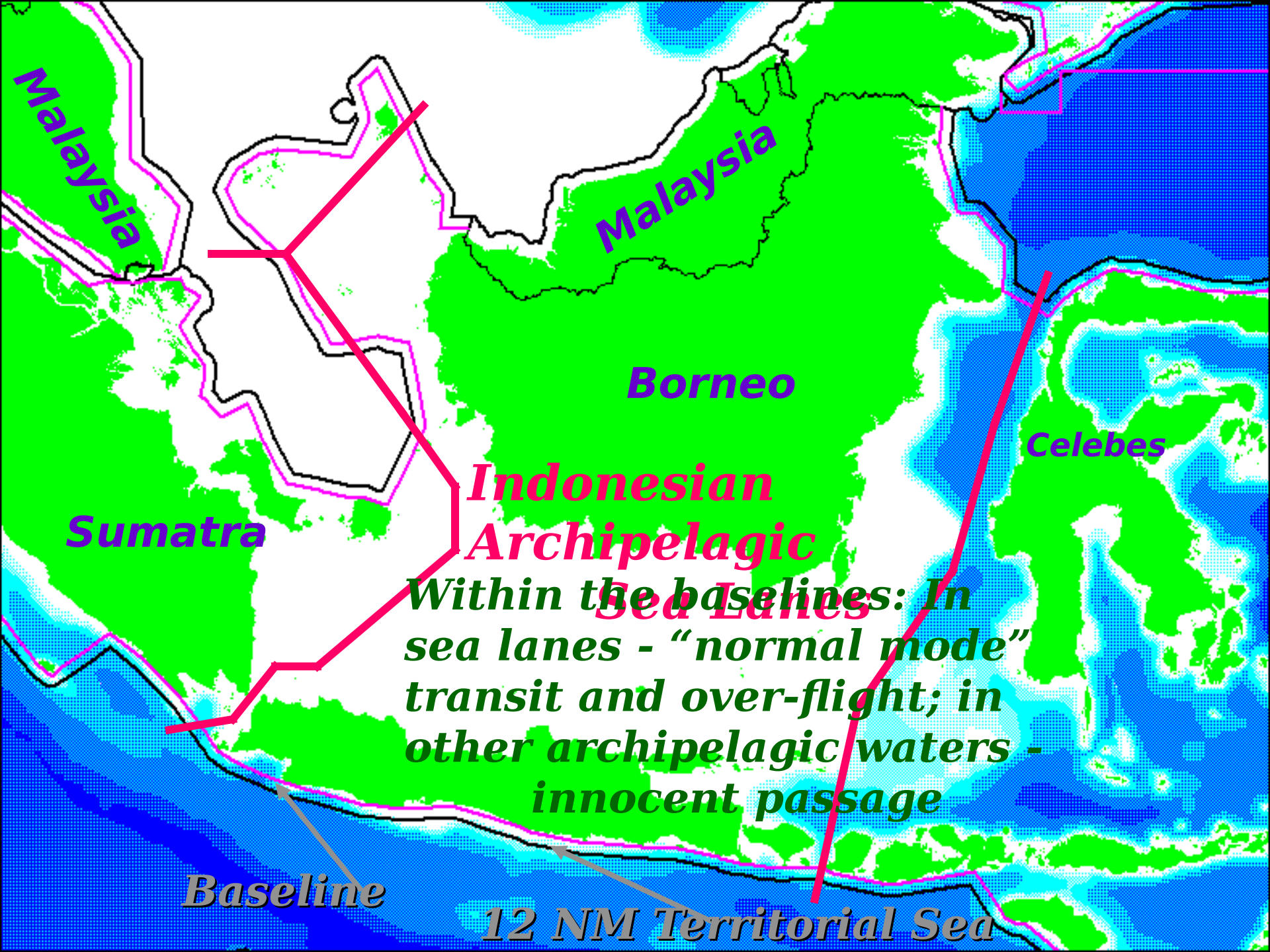
- NAVIGATION & OVERFLIGHT IN NORMAL MODE • SOLELY FOR CONTINUOUS, EXPEDITIOUS & UNOBSTRUCTED TRANSIT
- INNOCENT PASSAGE IN ARCHIPELAGIC WATERS OUTSIDE SEA LANES
- NON-SUSPENDABLE RIGHT
- MUTATIS MUTANDIS - TRANSIT PASSAGE PROVISIONS

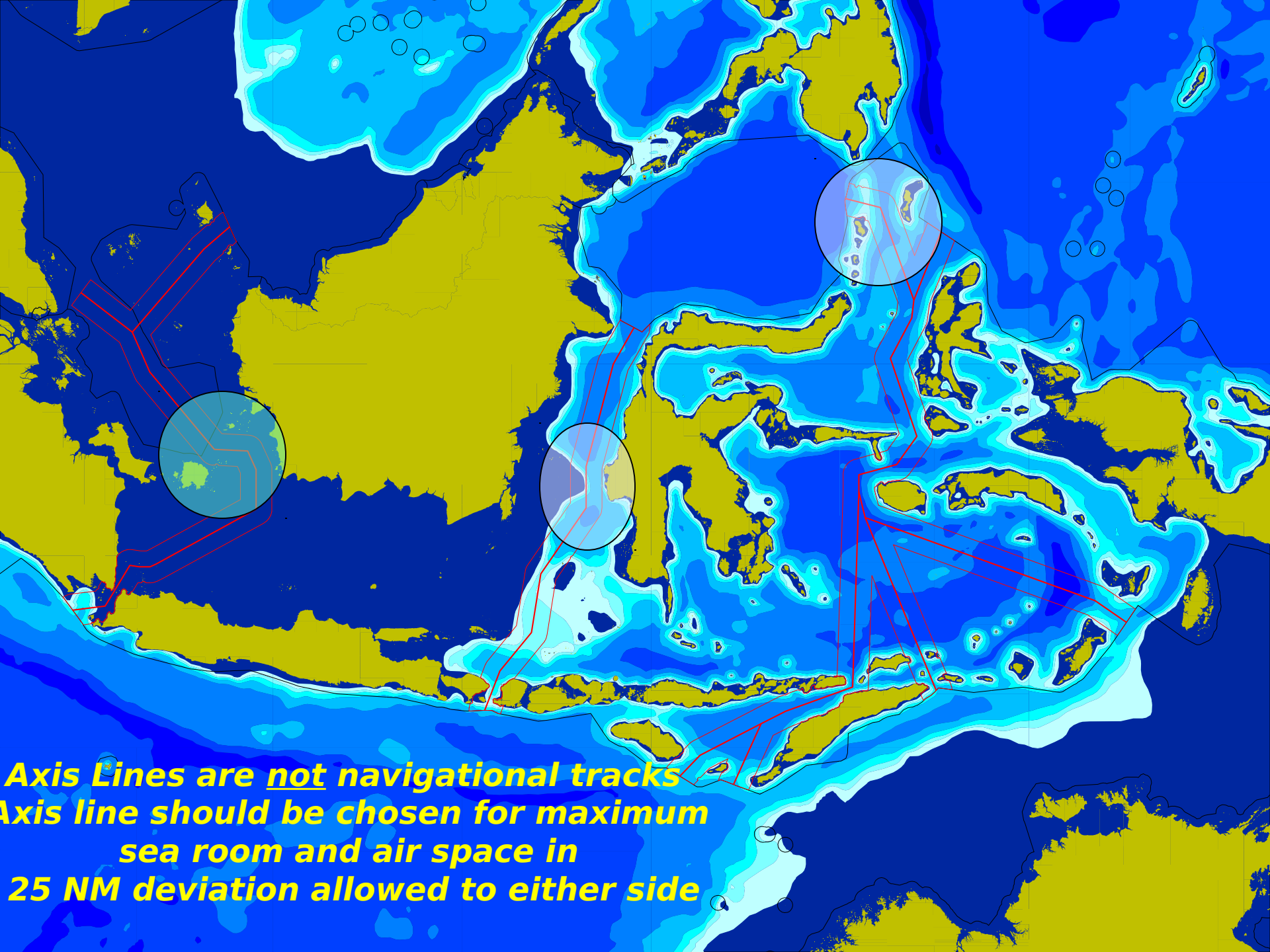
DESIGNATION OF ARCHIPELAGIC SEA LANES

- SEA LANES & AIR ROUTES MUST: • INCLUDE ALL NORMAL PASSAGE ROUTES & ALL NORMAL NAVIGATIONAL CHANNELS • CONFORM TO ACCEPTED INTERNATIONAL REGULATIONS • REFERRAL, IMO APPROVAL PRIOR TO IMPLEMENTATION
- IF NO SEA LANES DESIGNATED --ARCHIPELAGIC SEA LANE PASSAGE IN ALL ROUTES NORMALLY USED FOR INTERNATIONAL NAVIGATION & OVERFLIGHT

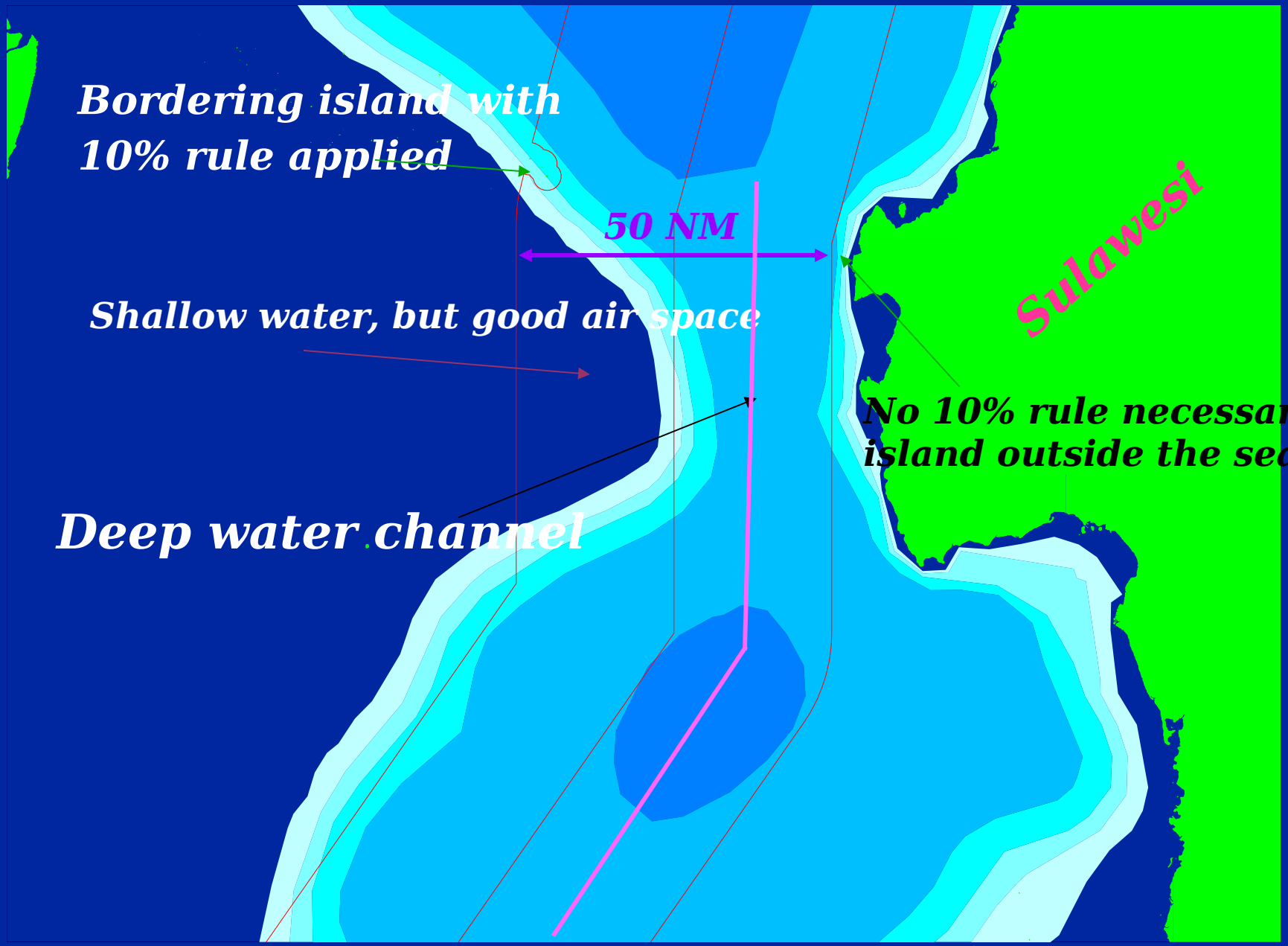
SEA LANES & TRAFFIC SEPARATION SCHEMES

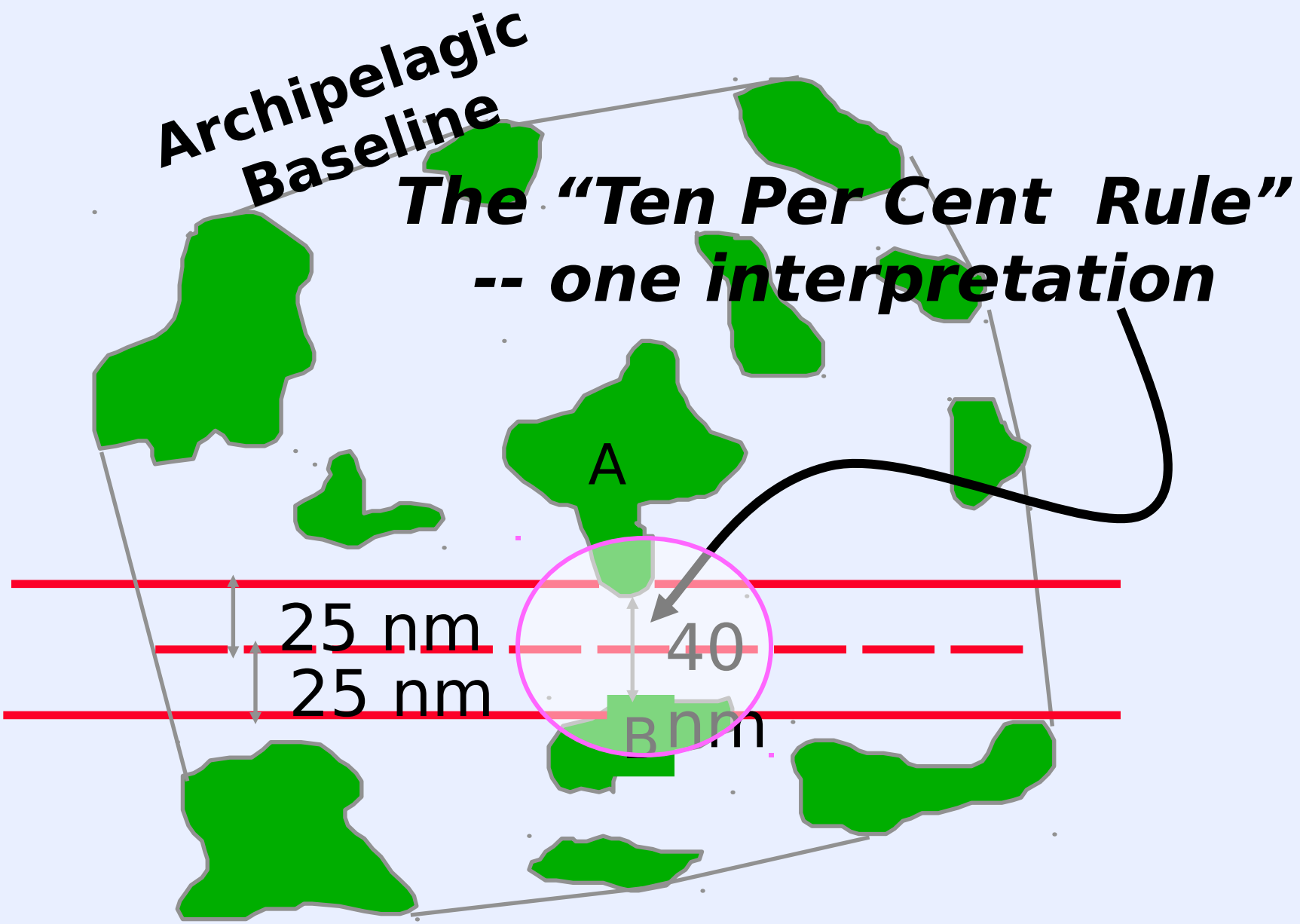
- AXIS POINTS FROM ENTRY POINTS OF TRANSIT ROUTES TO EXIT POINTS
- MAXIMUM WIDTH -- 50 NM
- ARCHIPELAGIC STATES - INDICATE AXIS OF SEA LANES & TRAFFIC SEPARATION SCHEMES
- SHIPS IN ARCHIPELAGIC SEA LANE PASSAGE MUST RESPECT APPLICABLE SEA LANES & TRAFFIC SEPARATION SCHEMES DESIGNATED & PRESCRIBED IAW LOSC


Malaysia
Malaysia
Borneo
Celebes
Sumatra
Indonesian Archipelagic Sea Lanes
Within the baselines: In sea lanes - "normal mode" transit and over-flight; in other archipelagic waters – innocent passage
Baseline
12 NM Territorial Sea


Axis Lines are not navigational tracks
Axis line should be chosen for maximum
sea room and air space in
25 NM deviation allowed to either side

Indonesian Archipelagic Sea Lane II
Borneo
Sulawesi
Java
Bali
Lombok
Lombok Strait


Bordering island with
10% rule applied
50 NM
Shallow water, but good air space
Sulawesi
No 10% rule necessary;
island outside the sea la
Deep water channel



Ships/AC have 4 nm standoff from islands A &

MARINE SCIENTIFIC RESEARCH & MILITARY & HYDROGRAPHIC SURVEY ACTIVITIES

COMNAVMETOCCOM-COUNSEL

MARINE SCIENTIFIC RESEARCH

- OCEANOGRAPHY, MARINE BIOLOGY, FISHERIES RESEARCH, SCIENTIFIC OCEAN DRILLING AND CORING, GEOLOGICAL/GEOPHYSICAL SCIENTIFIC SURVEYING, AND OTHER ACTIVITIES WITH A SCIENTIFIC PURPOSE
- RIGHT TO CONDUCT MSR, SUBJECT TO RIGHTS AND DUTIES OF OTHER STATES

MARINE SCIENTIFIC RESEARCH

- COASTAL STATE CAN REQUIRE CONSENT WITHIN WATERS UNDER THEIR JURISDICTION
  - INTERNAL WATERS, TERRITORIAL SEA, ARCHIPELAGIC WATERS, CONTINENTAL SHELF & EEZ
- BALANCE - SPECIFIC CRITERIA - MAXIMUM SCIENTIFIC ACCESS
  - SHOULD NORMALLY GRANT CONSENT
  - ESTABLISHED RULES & PROCEDURES
  - CONSENT MAY BE WITHHELD UNDER CERTAIN CONDITIONS

U.S. DOES NOT REQUIRE NOTICE OR CONSENT FOR MSR WITHIN ITS EEZ

MARINE SCIENTIFIC RESEARCH

- IMPLIED CONSENT
- DUTIES OF RESEARCHING STATE/ INTERNATIONAL ORGANIZATION • NOT LESS THAN 6 MONTHS IN ADVANCE, FULL DESCRIPTION • NATURE & OBJECTIVE • METHODS TO BE USED • PRECISE GEOGRAPHIC AREA • ESTIMATED DATES • SPONSORING INSTITUTION • EXTENT OF COASTAL STATE PARTICIPATION REPRESENTATION

MARINE SCIENTIFIC RESEARCH

- RESEARCHING STATE OBLIGATIONS
  - PERMIT COASTAL STATE PARTICIPATION/ REPRESENTATION WITHOUT COST
  - PROVIDE PRELIMINARY REPORTS & FINAL RESULTS AND CONCLUSIONS
  - ACCESS TO & ASSESSMENT OF ALL DATA, SAMPLES & RESEARCH RESULTS
  - ENSURE RESULTS ARE MADE AVAILABLE INTERNATIONALLY

MARINE SCIENTIFIC RESEARCH

- COASTAL STATE RIGHTS • ORDER SUSPENSION • RESEARCH NOT CONDUCTED IN ACCORDANCE WITH INFORMATION PROVIDED • FAILURE TO COMPLY WITH LOSC DUTIES • ORDER CESSATION • NONCOMPLIANCE WITH LOSC, MAJOR CHANGE • SUSPENSION SITUATION NOT CORRECTED • NOT SUBJECT TO LOSC COMPULSORY DISPUTE SETTLEMENT

HYDROGRAPHIC & MILITARY SURVEYS

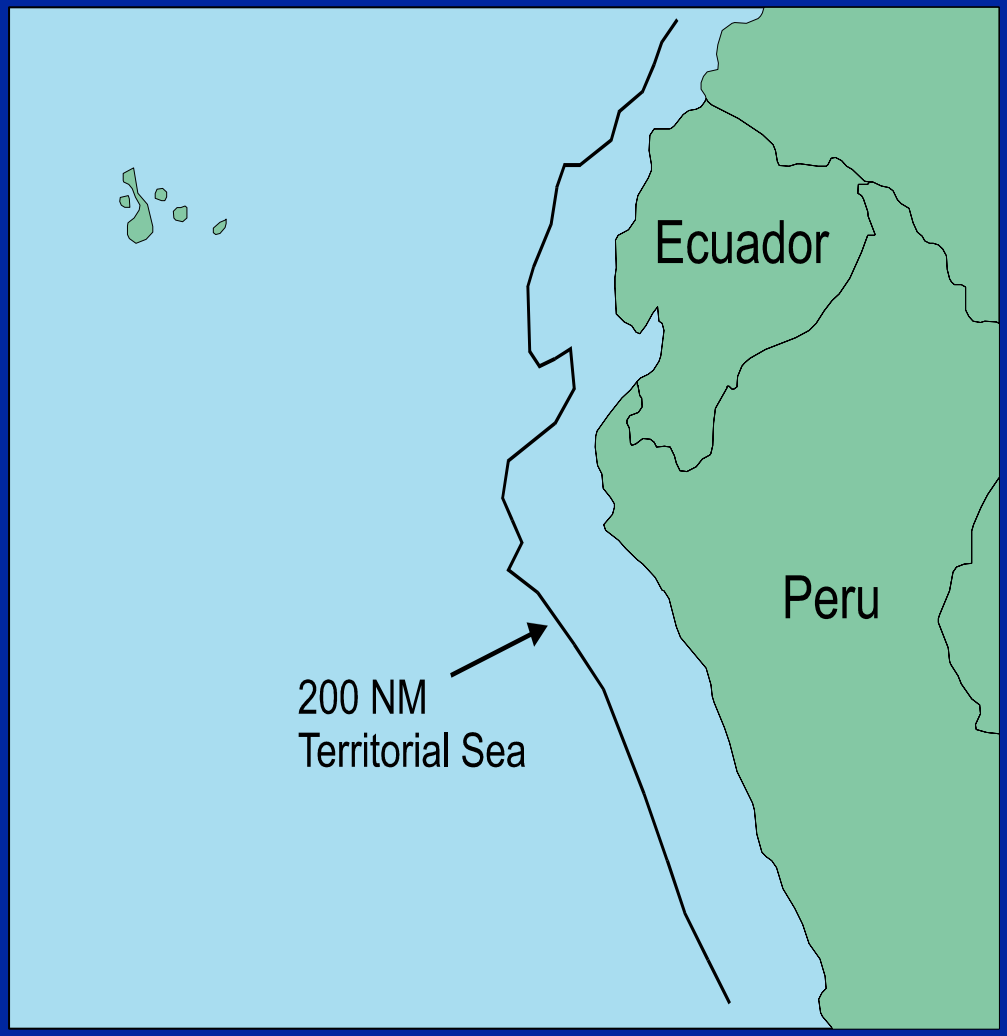
- HYDROGRAPHIC SURVEYS
- MILITARY SURVEY • MILITARY PURPOSE
- RESEARCH / MSR VS. HYDROGRAPHIC SURVEYS / SURVEY ACTIVITIES
- LOSC MSR PROVISIONS DO NOT APPLY TO HYDROGRAPHIC & MILITARY SURVEY ACTIVITIES • HIGH SEAS FREEDOM

EXCESSIVE MARITIME CLAIMS

COMNAVMETOCCOM-COUNSEL

TYPES OF EXCESSIVE CLAIMS

- BREADTH OF TERRITORIAL SEA
- BASELINES FROM WHICH CLAIMS ARE MEASURED
- SECURITY ZONES
- PRIOR PERMISSION AND NOTIFICATION REGIMES
- CLEARANCE REQUIREMENTS ON SOVEREIGN IMMUNE AIRCRAFT OVER INTERNATIONAL WATERS
- RESTRICTIONS ON MILITARY ACTIVITIES IN EEZ



EXCESSIVE TERRITORIAL SEA CLAIMS

NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COUNTRIES WITH TERRITORIAL SEA CLAIMS IN EXCESS OF 12 NM

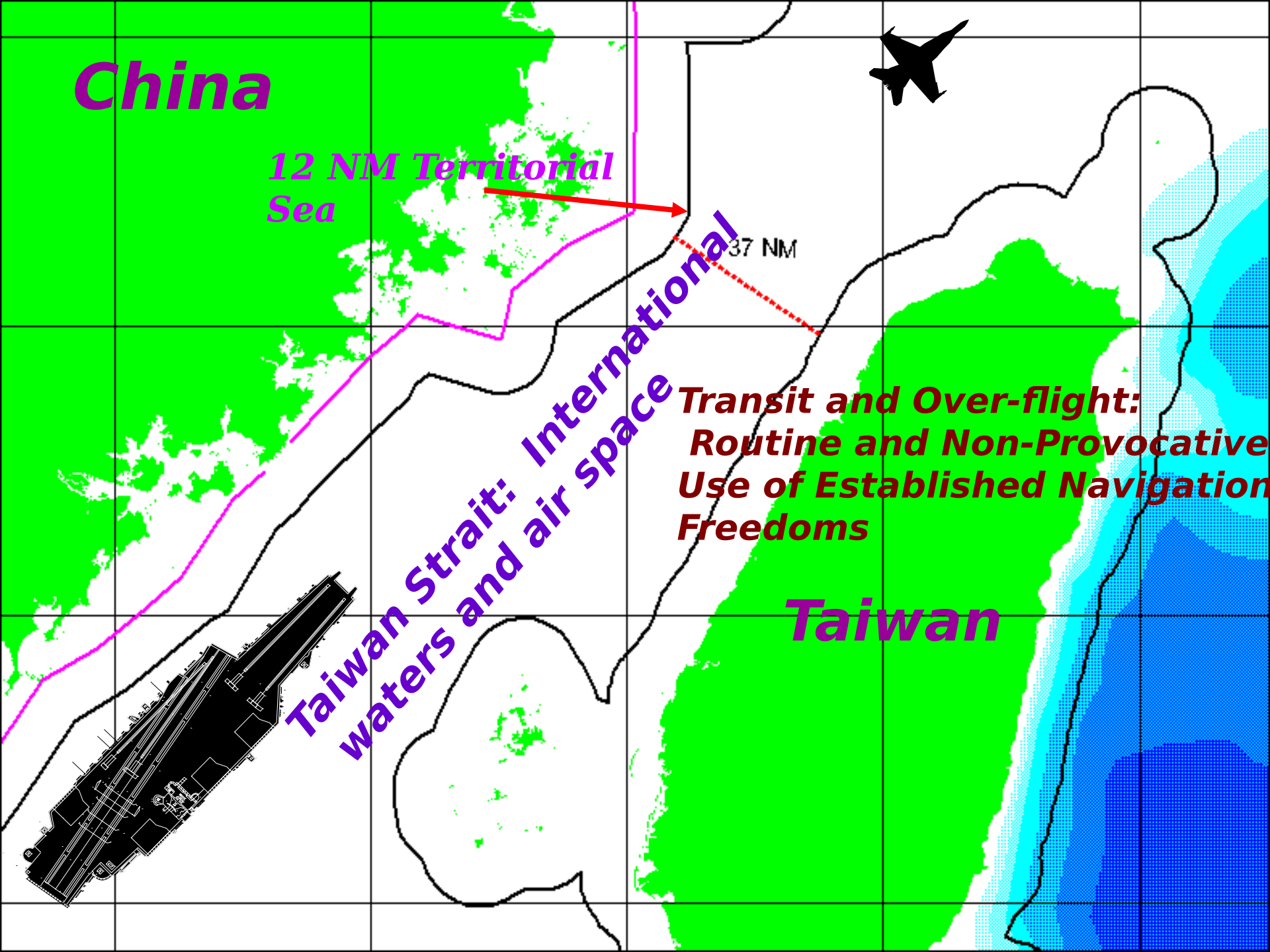
- 20 NM
  - ANGOLA
- 30 NM
  - NIGERIA
- 35 NM
  - SYRIA
- 50 NM
  - CAMEROON

- RECTANGULAR
  - PHILIPPINES

- 200 NM
  - BENIN
  - CONGO
  - ECUADOR
  - EL SALVADOR
  - LIBERIA
  - NICARAGUA
  - PERU
  - SIERRA LEONE
  - SOMALIA
  - URUGUAY

IMPACT ON NAVIGATIONAL FREEDOMS

- COMPLETE SOVEREIGNTY EXERCISED WITHIN TERRITORIAL SEA (SEABED, SUBSOIL & AIRSPACE)
- INNOCENT PASSAGE • NO SUBMERGED PASSAGE • NO RIGHT OF OVERFLIGHT WITHOUT PERMISSION
- PERU


China
12 NM Territorial Sea
37 NM
Taiwan Strait: International waters and air space
Transit and Over-flight:
Routine and Non-Provocative
Use of Established Navigation
Freedoms
Taiwan

ROLLED BACK EXCESSIVE TERRITORIAL SEA CLAIMS

- ALBANIA
- ARGENTINA
- BRAZIL
- GABON
- GERMANY
- GHANA
- GUINEA
- MADAGASCAR
- MAURITANIA
- PANAMA
- SENEGAL
- TANZANIA

Excessive Maritime Claims Block
Strategic Sea Lanes
With Transit Rights
Without Transit Rights

WESTERN PACIFIC
COUNTRIES IN RED MAKE EXCESSIVE MARITIME CLAIMS: SUCH AS,
REQUIRING PRIOR NOTICE AND PERMISSION FOR INNOCENT PASSAGE,
EXTENDING TERRITORIAL SEAS BY USE OF EXCESSIVE STRAIGHT BASELINES, SECURITY ZONES, &
EXCESSIVE EEZ RESTRICTIONS

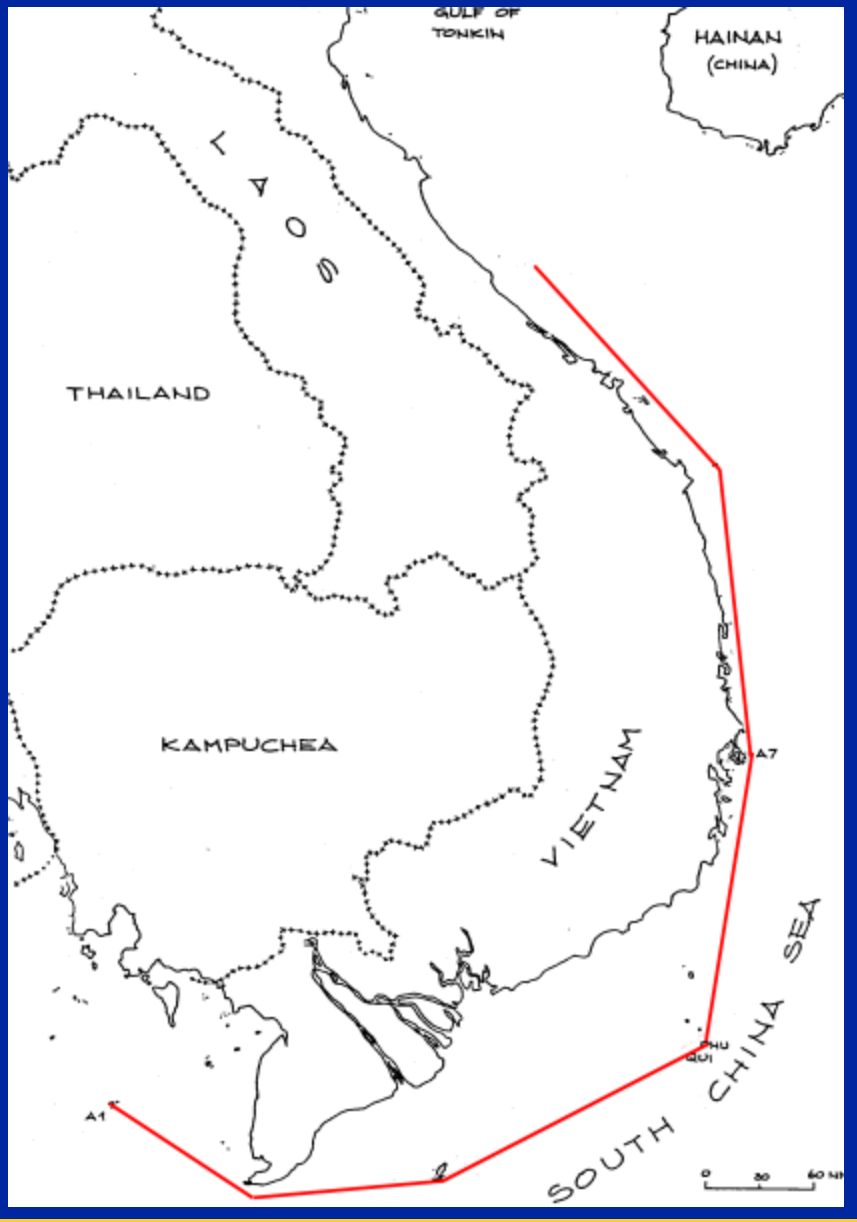
IMPROPERLY DRAWN STRAIGHT BASELINES

- OVER 60 STATES USE STRAIGHT BASELINES • 10 MORE HAVE ADOPTED ENABLING LEGISLATION, BUT HAVE NOT PUBLISHED BASELINES • MANY BASELINES INCONSISTENT WITH INTERNATIONAL LAW • 33 CLAIMS CHALLENGED BY U.S. THROUGH DIPLOMATIC PROTEST & FREEDOM OF NAVIGATION PROGRAM

IRANIAN STRAIGHT BASELINE CLAIMS

BASELINE EXAMPLE

VIETNAM



NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

COMNAVMETOCCOM-COUNSEL

EXAMPLES OF EXCESSIVE BASELINES

- DRAWN OTHER THAN FROM LOW WATER LINE
- ENCOMPASSING ROCKS
- STRAIGHT BASELINES
  - DRAWN OTHER THAN WHERE THERE ARE FRINGING ISLANDS OR DEEPLY INDENTED COASTLINES
  - DRAWN INCORRECTLY FOR ARCHIPELAGOS
  - EXCESSIVE LENGTH OF EACH SEGMENT (>24 NM OR >100 NM IN ARCHIPELAGOS)

NAVIGATIONAL FREEDOMS

- HOW MANY SEA LANES ARE DESIGNATED?
- WHERE ARE THEY LOCATED?
- PROCEDURES USED TO GAIN APPROVAL

IMPROPER DESIGNATION OF ARCHIPELAGIC SEA LANES

- REQUIREMENTS PRIOR TO DESIGNATION OF SEA LANES AND AIR ROUTES
  - MUST INCLUDE ALL NORMAL PASSAGE ROUTES AND NAVIGATIONAL CHANNELS
  - MUST BE APPROVED BY IMO BEFORE IMPLEMENTATION

UNRECOGNIZED HISTORIC WATERS CLAIMS

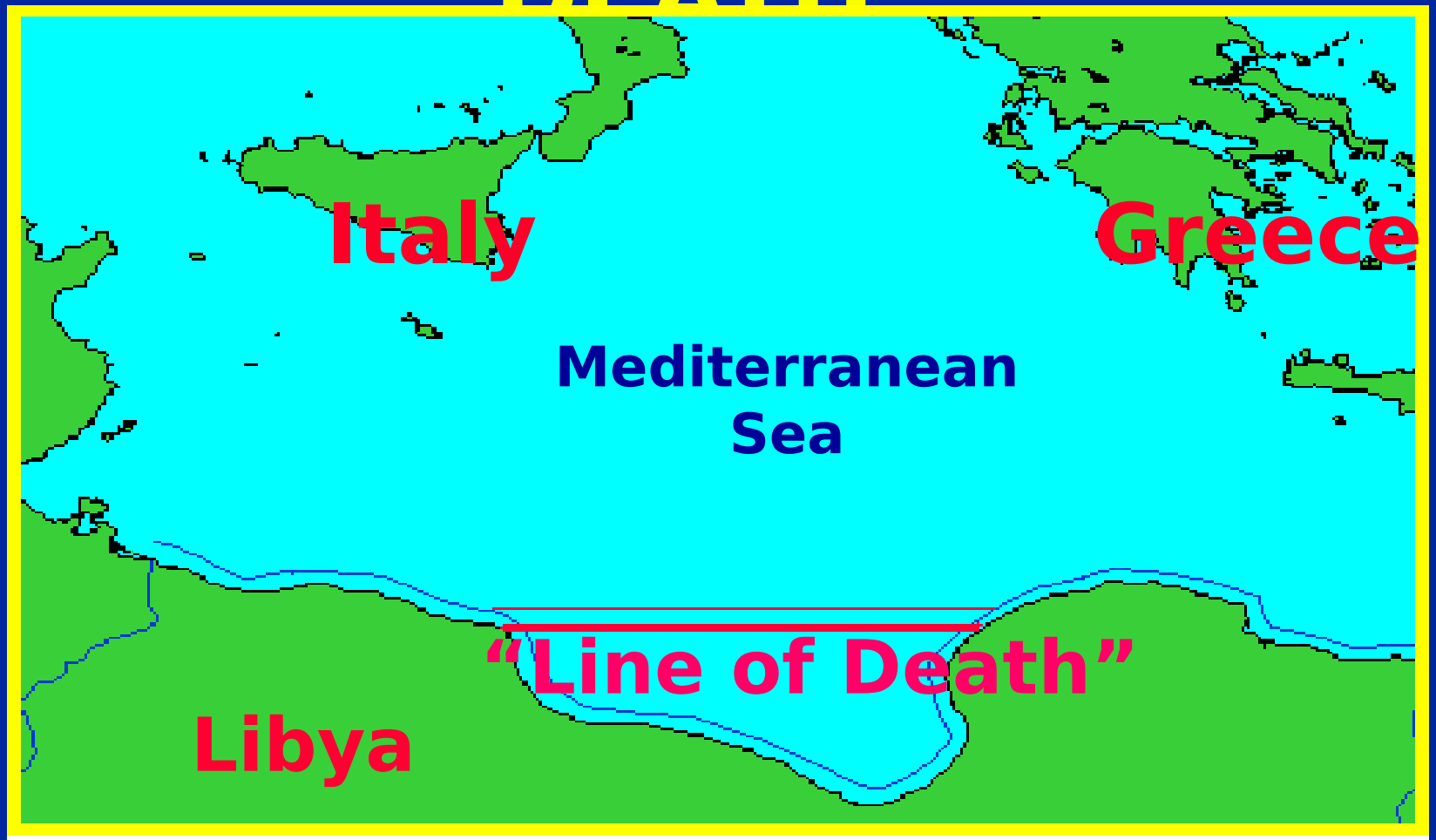
- U.S. HAS CHALLENGED ALL BUT FOUR THROUGH DIPLOMATIC AND/OR FREEDOM OF NAVIGATION ASSERTIONS

- ARGENTINA
- CAMBODIA
- DOMINICAN REPUBLIC
- EL SALVADOR
- INDIA
- LIBYA
- RUSSIA
- THAILAND
- VIETNAM
- AUSTRALIA
- CANADA
- EGYPT
- HONDURAS
- KENYA
- PANAMA
- SRI LANKA
- URUGUAY

IMPACT ON NAVIGATIONAL FREEDOMS

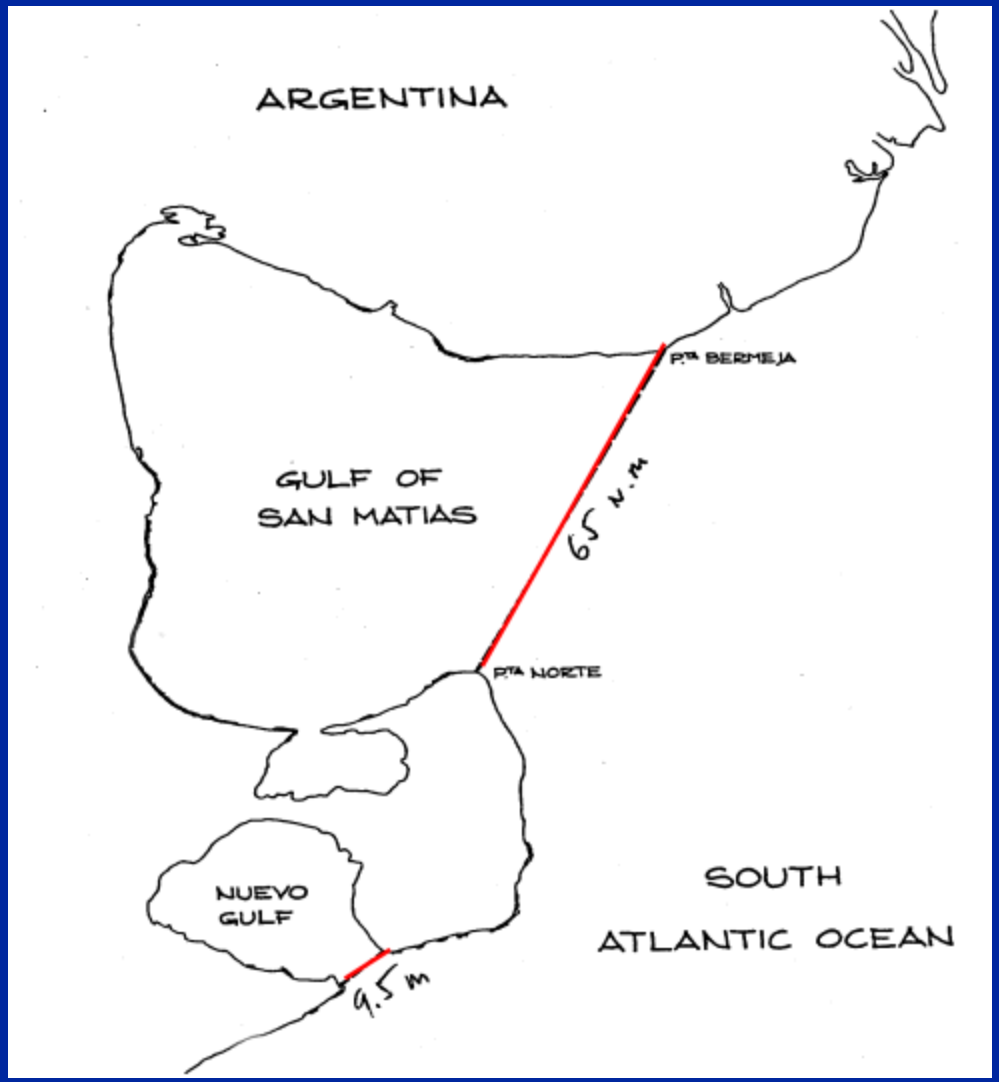
- HISTORIC WATERS CONSIDERED INTERNAL WATERS
  - SUBJECT TO COMPLETE SOVEREIGNTY & CONTROL
  - NO RIGHT OF PASSAGE WITHOUT CONSENT
- EXAMPLE: LIBYA'S CLAIM TO GULF OF SIDRA - "LINE OF DEATH"

LIBYA'S "LINE OF DEATH"



BASELINE EXAMPLE

ARGENTINA

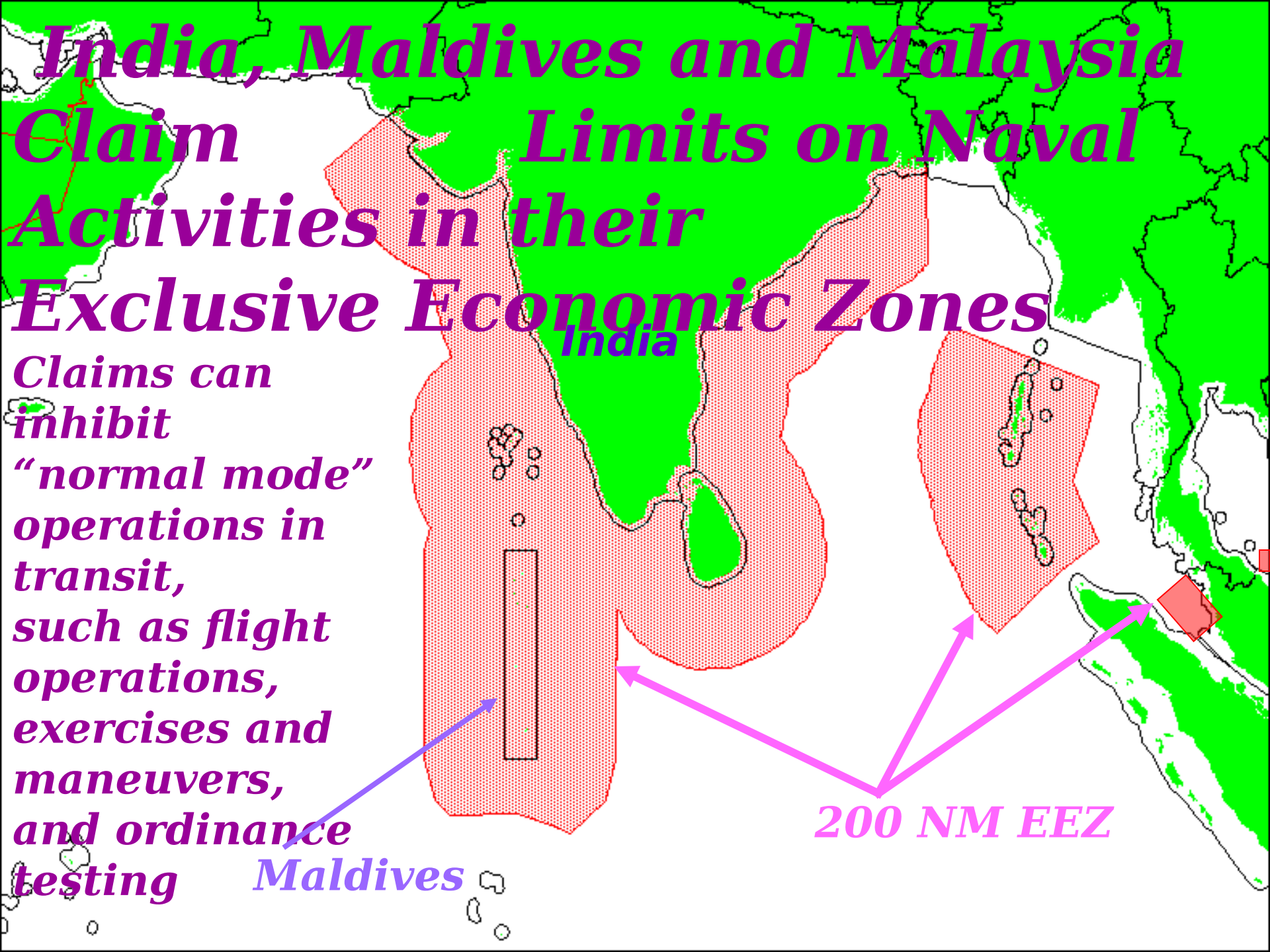


NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

OVER-REGULATION IN EEZ

- RESTRICTIONS ON MILITARY ACTIVITIES
- DISCRIMINATORY TREATMENT OF NPW AND HAZARDOUS CARGOS
- UNREASONABLE ANTI-POLLUTION REGULATIONS
- PROHIBITIONS ON MARITIME DRUG ENFORCEMENT

India, Maldives and Malaysia Claim Limits on Naval Activities in their Exclusive Economic Zones



Claims can inhibit "normal mode" operations in transit, such as flight operations, exercises and maneuvers, and ordinance testing

RESTRICTIONS ON HYDROGRAPHIC & MILITARY SURVEYS

- LOSC GIVES COASTAL STATE JURISDICTION OVER MARINE SCIENTIFIC RESEARCH (MSR) IN THE EEZ
- MILITARY & HYDROGRAPHIC SURVEY ACTIVITIES
  - HIGH SEAS FREEDOM
  - NO COASTAL STATE NOTICE OR CONSENT REQUIRED
- BRAZIL, SWEDEN, PAKISTAN

RESTRICTIONS ON OTHER MILITARY ACTIVITIES

- RIGHT TO CONDUCT MILITARY ACTIVITIES IN THE EEZ • "DUE REGARD" FOR RESOURCE RELATED RIGHTS & JURISDICTION • NON-RESOURCE-RELATED MILITARY ACTIVITIES NOT SUBJECT TO COASTAL STATE REGULATION
  - BRAZIL, IRAN, CAPE VERDE, INDIA & URUGUAY

RESTRICTIONS ON MILITARY ACTIVITIES

- RESTRICTIONS RANGE FROM COMPLETE PROHIBITIONS TO PRIOR NOTICE & CONSENT REGIMES
- IMPACT ON NAVIGATIONAL FREEDOMS ADVERSELY AFFECTS ABILITY TO:
  - CONDUCT HYDROGRAPHIC & MILITARY SURVEYS
  - VITAL RESEARCH, DEVELOPMENT, TESTING & EVALUATION OF NEW EQUIPMENT & WEAPONS SYSTEMS

SOVEREIGN IMMUNITY

- ARTICLE 236 - LOSC ENVIRONMENTAL PROVISIONS DO NOT APPLY TO SOVEREIGN IMMUNE VESSELS
- BEST EFFORTS • COMPLIANCE ENCOURAGED IF REASONABLE & PRACTICABLE WITHOUT ADVERSELY AFFECTING OPERATIONS • U.S COMMITMENT TO BEST EFFORTS • ANNEX V MARPOL - PLASTICS DISCHARGES

CONCLUSION

- COMPREHENSIVE LEGAL REGIME
  - ACCESS TO WORLD'S OCEANS
  - COASTAL STATE RIGHTS & INTERESTS
  - CAREFUL BALANCE
- NEW OPPORTUNITY FOR WIDESPREAD ADHERENCE